TRANSCRIPT OF RECORD.

United States Circuit Court

OF APPEALS.

FOURTH CIRCUIT.

No. 130.

WILLIAM H. STRICKLAND, MASTER AND CLAIMANT OF STEAMSHIP "CLANDEBOYE,"
APPELLANT,

versus

LEO LOMM, MASTER, &c., APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF VIRGINIA.

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TRANSCRIPT OF RECORD.

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Eastern District of Virginia.

At Norfolk, May 28th, 1894.

Be it remembered, that on the said day, came Leo Lomm, master, etc., and filed the following:

LIBEL.

To the Honorable Robert W. Hughes, Judge of the Court aforesaid:

The libel of Leo Lomm as Master of the Steam tug "Dauntless," of Brunswick, in the State of Georgia, on behalf of all persons interested as Salvors, against the British Steamship "Clandeboye", her engines, boilers and machinery, tackle, apparel and furniture, and against the cargo now laden aboard of her, and against her freight money, and against all persons intervening for their interest therein, in a cause of salvage, civil and maritime, alleges as follows:

1. The Dauntless is a steam tug, owned by persons in Brunswick, Georgia, and is fitted and adapted to towing in rivers and harbors and upon the ocean, and is also engaged in rendering services to distressed vessels upon the high seas, and is supplied with the necessary apparatus and equipment for such towage services. She is a new steel tug, not quite one year old, and of the actual value of $30,000. She is 110 feet long and draws about ten feet of water when not carrying a supply of coal. She has a compound engine of 17, 32 and 24 inch stroke, and with a steam pressure of 115 pounds to the square inch, and has 350 indicated horse power.

2 On the 16th day of May, 1894, the libellant, coming from sea on the Dauntless, arrived at Brunswick, and there heard that the steamship Clandeboye, with a broken shaft, was lying at anchor on the Bahama Banks, and that her mate was in Savannah for the purpose of securing assistance. On

the 18th day of the same month, the libellant read a statement in the Savannah Morning News that no tugs had gone to the assistance of the distressed vessel. Promptly, after the information reached him, the libellant took on board the Dauntless 57 tons of coal, and immediately started to the relief of the Clandeboye.

At 10.45 a. m., on the 19th day of May, the libellant, in charge of the Dauntless, and having on board a crew of nine men, all told, arrived off Little Bahama Banks and found the said steamship anchored near Stranger Cay Channel, to the northward of the Banks, and to the east of north of the shoal at that point, which shoal was distant less than two miles from the spot where the ship was anchored. She was anchored in 30 fathoms of water, on a rocky bottom, and within less than two miles of the breakers.

The master of the steamship applied to have her towed to Vera Cruz, Mexico, but the libellant informed him that his supply of fuel was not sufficient for such an operation and that the Dauntless would forfeit her insurance if she proceeded to the Gulf. He also suggested to the master of the Clandeboye the propriety of towing her to Brunswick or Savannah, but as it was necessary to repair the broken shaft of the steamer, it was mutually agreed that the Dauntless should tow her to Newport News, Virginia. But it was necessary to proceed to Brunswick to obtain sufficient coal for so long a voyage, and the master of the Clandeboye agreed to that suggestion.

Before undertaking the towage operations, a conversation was held between the masters of the said vessels in relation to making a contract for the payment for services rendered, and it was mutually agreed that the matter should be left to the arbitration of three disinterested persons upon arrival at Newport News.

3. At five minutes past one o'clock p. m., on Saturday, the 19th day of May, the Dauntless commenced to tow the Clandeboye to Brunswick Bar, using as a hawser an eight inch manilla bolt rope 125 fathoms long, which was nearly new and which belonged to the Dauntless. It was connected to the anchor chains on the starboard bow of the Clandeboye and also to the stern-bitts of the steam tug.

At the time the towage began the wind was very light from the south-west and so continued until about midnight of the same day, when it suddenly changed to north north-east, gradually backing around to the north-west. From midnight of Saturday until 10 o'clock a. m., on Sunday, the wind was so strong as to make a heavy sea, so heavy indeed that no headway could be made by the ship or by the tug that was towing her. At times they were going astern, unable to make progress against such a gale of wind and against such a heavy sea. The wind moderated from 10 a. m., Sunday, until 2 p. m., during which time the tug proceeded to tow the steamship at about one and a half knots an hour against the sea, which was still high. At 2 o'clock p. m., on the same day the wind arose again and became very strong until about 11 p. m., of the same night (Sunday), when it again moderated. It was not possible to make any headway against such a wind and sea at any time between 2 o'clock p. m., on Sunday, and 11 o'clock p. m., of the same day; and during all this rough weather the steam tug was in great danger of having her shaft rung off by the sea, which threw the stern of the said tug high out of water, and it required much skill and care on the part of the master and engineers of the Dauntless to prevent her being disabled in that emergency. If her shaft had been injured, or if it had become impossible for the tug to tow the steamship in that weather, each of the vessels, the tug and the disabled steamship, would have been at the mercy of the wind and waves, which were then driving heavily toward the Bahama Banks.

The wind and sea moderated all the way from 11 o'clock p. m., on Sunday, until both vessels arrived at Brunswick Bar on Tuesday, 22nd, at 9. 30 o'clock a. m.

Coal was obtained at Brunswick by the Dauntless, and the towing recommenced at 6.30 p. m., on Tuesday, May 22nd, the weather being moderate all the way from Brunswick up to Hampton Roads, except that there was a rain squall at one time in the night, but it was short and occasioned no trouble. At 2 o'clock p. m., on Saturday, May, 26, the Dauntless anchored the Clandeboye in Hampton Roads, proceeding with her in tow, later in the day, to Newport News for repairs.

4. The libellant found several small boats lying close to

the Clandeboye, off Bahama Banks, and was informed that they were there for the purpose of assisting the crew of the steamship to leave her in the event of her dragging her anchor or breaking her cable in any bad weather that might come on. In fact, that rocky bottom had considerably chafed the anchor chains close to the anchor itself, as was discovered upon heaving it in. The crew of the Clandeboye had their clothes packed up, to leave her in case of necessity.

5. The shaft of the Clandeboye was broken on the 22nd day of April, 1894, and during that time her master had been unable to obtain any effective assistance. One steamer had approached her during that time, but went away without taking her in tow. About a week before the arrival of the Dauntless off Bahama Banks, the mate left the ship in a boat, with three men, to look out on the ocean in the track of steamers, for assistance, but failed to procure it. He went into the Savannah at Tybee and proceeded to Savannah, where he applied for the assistance of an ocean steamer, and as a result of his intervention the steam tug Morse was sent from New York to the relief of the Clandeboye, via Savannah, to take up the mate and his detachment of three men, and then proceed to the Little Bahama Banks. On Monday the 21st day of May the Morse left Savannah for Little Bahama, but on the 22nd the Dauntless had arrived at Brunswick Bar with the Clandeboye in tow. The bad weather had prevented the Morse from reaching Savannah before the 21st.

Brunswick is about 278 miles from Stranger Cay Channel, Bahama Banks, and Hampton Roads is about 535 miles from Brunswick.

The bad weather which prevailed on Saturday 19th and on Sunday the 20th of May, at the times previously stated, was sufficiently violent to cause a vessel at anchor on a rocky bottom in 30 fathoms of water, where the Clandeboye was found at anchor, to drag her anchor and force her upon Bahama Banks, which is a coral rock. Unquestionably that steamship and her cargo would have become a total loss if she had not been rescued by the Dauntless at the time and in the manner previously stated in this libel. If she had not dragged her anchor at that time she would almost certainly have broken her chain and have been driven ashore.

If the bad weather had continued the Dauntless would have ran out of coal, in which case she would have been subjected, with all hands on board, to danger of loss at sea and the Claudeboye would then have been left without assistance, at considerable from land.

6. The Clandeboye is an iron steamer of the burden of about 1450 tons net register, and is worth between $100,000, and $150,000, it is believed and charged. Her cargo consisted and still consists of 2,000 tons of patent fuel and of assorted merchandise and machinery. The entire cargo is of great value, amounting probably to about $150,000. Her freight money is estimated to be worth about $15,000. The entire cargo was saved in perfect condition, and the steamship sustained no further injury during the salvage operations.

7. The libellant further avers that the said salvage service was of the highest order of merit; that the said steamship Clandeboye was rescued by him in an unfrequented part of the ocean, and the steamship was taken under the protection of the tug just in time to prevent her destruction by the northerly gale aforesaid. The libellant further avers that during the said salvage service the Dauntless was put to heavy expense in the way of extra fuel, extra crew, and other supplies, the exact amount of which cannot now be ascertained but will be shown at the hearing. The value of the Dauntless per day, when not engaged in salvage operations, but in ordinary towing operations, in good weather, exceeds $110; her expense account amounting to about $75 per day.

8. The said steamer Clandeboye is now in the Eastern District of Virginia with her cargo.

9. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, the libellent prays that process, in due form of law, according to the course of this honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said steamship Clandeboye, her tackle, apparel and furniture,and against the cargo now laden aboard of her, and her freight money, and that all persons having any right, title, or interest therein, may be cited to appear and answer, on oath, all and singular, the matters aforesaid, and that this court

will be pleased to decree the allowance of a liberal salvage award in the premises, which, the libellant avers, should be the sum of fifty thousand dollars ($50,000), in addition to the expenses incurred, and that the said steamer Clandeboye, and her cargo, should be condemned and sold to pay the same, with interest and costs, and that the libellant should have such other and further relief as, in law and justice, he may be entitled to receive.

LEO LOMM,
Master of steamer Dauntless.

SHARP & HUGHES, Proctors.

Subscribed and sworn to before me this 28th day of May, 1894.

H. H. LITTLE,
Notary Public.

ANSWER OF WM. H. STRICKLAND, MASTER AND CLAIMANT.

Filed June 15, 1894.

To the Honorable Robert W. Hughes, District Judge of the United States for the Eastern District of Virginia.

WM. H. STRICKLAND, master and claimant of the British steamer Clandeboye, intervening for the interests of the owners of the said steamer, and of her cargo and freight, answers, as follows, the libel filed by Leo Lomm, as master of the steam tug Dauntless, on behalf of himself and other persons claiming interest as salvors against the said steamer Clandeboye, her cargo and freight.

First. The claimant admits, upon information and belief, that the Dauntless is a steam tug owned by persons in Brunswick, Georgia, fitted and adapted to the usual uses of a steam tug of her dimensions.

The claimant has no knowledge or information sufficient to form a belief as to the stroke, steam pressure, or horse power of the said tug; but denies, upon information and belief, that the said steam tug was of the value of $30,000; and avers, on information and belief, that the services rendered the Clandeboye were the first alleged salvage services rendered by said tug to distressed vessels upon the high seas.

Second. The claimant, upon information and belief, admits that the libellant learned in Brunswick that the steamer Clandeboye was lying at anchor off Stranger Cay, Bahama Banks, and that her mate had come to Savannah for the purpose of sending out assistance; and admits, likewise, upon information and belief, that thereafter the Dauntless left Brunswick to proceed to the Clandeboye.

The claimant admits that at about the time alleged in the libel, on the 19th day of May, the Dauntless, with her crew, arrived alongside the said steamer Clandeboye, and that the Clandeboye, at the time, was lying to the northward of the Banks, anchored in thirty fathoms of water, distant about two miles from the shoals and about three miles from Stranger Cay.

The claimant admits that he stated that he desired to have the Clandeboye towed to Vera Cruz, but that the libellant was unwilling to render such service, and that it was finally agreed that the Dauntless should tow the Clandeboye to Newport News, with leave to the Dauntless to stop at Brunswick for further coals, and that the amount of compensation should be determined by arbitration, if practicable.

Third. The claimant admits that, at about one o'clock, on the 19th day of May, the Dauntless commenced to tow the Clandeboye, using an eight-inch manilla rope of about 125 fathoms in length, belonging to the Dauntless, running from the stern-bitts of the steam tug to the starboard bow of the Clandeboye.

The claimant admits that the sea and wind were light at the time, and that in the night a thunder storm, or squall, arose, during which the tug was powerless to make much headway, but avers that that was due solely to the fact that the tug was not of sufficient power to meet the very ordinary emergency of the squall, and denies that the tug was, during the pendency of the squall, or at any period during the service, in any danger.

The claimant admits that the steamer arrived at Brunswick Bar about ten o'clock in the morning of Tuesday, the 22d of May, having encountered generally fair weather, with occasional bits of squall and rain.

The claimant admits that the Dauntless took on coal at

Brunswick, and recommenced towage in the afternoon of May 22d, and thence proceeded to Hampton Roads, where the Clandeboye came to anchor in the afternoon of May 26th, and later in the day proceeded to an anchorage at Newport News.

Fourth. The claimant admits that there were several sailboats lying near the Clandeboye, off Bahama Banks, when the Dauntless came alongside, and denies each and every other allegation in the fourth article, or paragraph, of the libel contained.

Fifth. The claimant admits that the tail-shaft of the Clandeboye broke on April 22d, and that, from that time, the master had not been able to obtain effective assistance, upon satisfactory terms; though one steamer had offered to tow him, upon conditions which the claimant deemed unreasonable.

The claimant admits that, on May 10th, the mate left the steamer, in a boat, with three men, with a view of going to the Florida Straits, to intercept steamers, and ask for asssistance, or of going to the coast; that the mate made Savannah, on May 15th, and employed agents, through whom the steam tug Morse was engaged, to proceed to the Clandeboye, stopping off Tybee light, to take up the mate and his detachment of three men, and to tow the Clandeboye to Vera Cruz, which was her port of destination, and to which port her cargo was consigned.

The claimant admits that the Morse stopped at the buoy, off Tybee light, early on Monday, May 21st, and thence proceeded to the anchorage of the Clandeboye, but avers that the delay of the Morse was occasioned by some difficulty in procuring sufficient coals.

The claimant admits that Brunswick is about 300 miles from Stranger Cay, and that Hampton Roads is about 450 miles from Brunswick.

The claimant denies each and every other allegation in the Fifth Article or Paragraph of the said libel contained.

Sixth. The claimant admits that the Clandeboye is an iron steamer of about 1,450 tons net register; but denies that she is worth between $100,000 and $150,000, and avers that her value, in her damaged condition, did not exceed $60,000.

The claimant admits that she had a cargo of over 2,000 tons of patent fuel, with certain small lots of machinery and

merchandise; but denies that the cargo was of the value of $150,000, or that her freight money was of the value of $15,000.

The claimant admits that the cargo was in perfect condition and that the steamer sustained no material injury during the service; but avers that the value of the cargo, in Newport News, including the freight moneys, did not exceed $17,000; the invoice value of the cargo being about $13,000.

Seventh. The claimant denies each and every allegation in the Seventh Article or Paragraph of the said libel contained.

Eighth. The claimant admits the jurisdiction of the Court, and that the Clandeboye with her cargo is within the territorial limits of the Eastern District of Virginia, and denies each and every other allegation in the Eighth and Ninth Articles or Paragraphs of the said libel contained.

Ninth. Further answering the said libel, the claimant avers that the injury to the Clandeboye consisted only in the breaking of the tail-shaft, which rendered her propeller useless; that after the disaster, the Clandeboye made her way under sail to a safe anchorage off Stranger Cay, where she was securely anchored, with a patent anchor on a heavy stud-link chain, in good holding ground.

The claimant further avers that the steamer was tight and, except for the injury to her tail-shaft, in all respects sound, and had a full supply of provisions, and was not in a position of any danger, though naturally desirous of resuming her voyage and reaching Vera Cruz, her port of destination.

The claimant further states that, while lying at anchor, and before the arrival of the Dauntless, the steamer rode through a number of rain squalls, without danger or difficulty, similar to those which she encountered while in tow of the Dauntless, and that claimant had on board, ready for use if required, five other anchors, but that no occasion, in his opinion, arose for the use of such anchors, and therefore they were not put out.

Claimant further states that, if there had been indications of prolonged bad weather, or if, for any other reason, he had deemed it necessary, he could have worked his vessel with the assistance of the sailing vessels there, or by means of his sails and the proper use of anchors, to a more sheltered position

behind Stranger Cay, but that, in his judgment, no occasion arose for such action.

Tenth. The claimant further avers that, on the 17th of May, 1894, the agents, to whom the mate of the Clandeboye had applied at Savannah, engaged the steam tug Morse, a seagoing tug of far greater power and value than the Dauntless, to proceed from Philadelphia to the Clandeboye, and to tow her to Vera Cruz, under an engagement that the Morse should be paid, for such completed service, the sum of $5,000, with the provision, however, that, in the event that the Clandeboye should have left Bahama Banks before the arrival of the Morse, a payment of $1,500 should be made. That, thereafter, it was agreed that the Morse should stop off Tybee Light and receive on board the mate and three men and their boat, for an extra compensation of $200.

The claimant further says that other tugs had offered to proceed to the Clandeboye and tow her to the United States, at prices ranging from $3,500 to $4,000; but that, owing to the fact that the cargo of the Clandeboye was consigned to Vera Cruz, the owners of the Clandeboye determined to employ the Morse upon the foregoing terms.

The claimant further avers, upon information and belief, that the agents who were acting for the Clandeboye in Savannah, were the firm of J. F. Minis & Company, and that such fact was known to the libellant and to the other owners of the Dauntless, as well as the fact that the said agents had employed the Morse to proceed to the Clandeboye and take her to Vera Cruz; but that nevertheless the libellant and the other owners of the tug Dauntless, in bad faith, sent out their tug secretly from Brunswick, without any request or employment for the proposed service, and knowing that their services were not desired, but that other efficient service had been employed; and that the libellant, upon arriving alongside the Clandeboye, concealed from the master of the Clandeboye the fact that the agents at Savannah had employed another tug to come to his relief, and by such concealment unfairly influenced the master of the Clandeboye to permit the Dauntless to take the Clandeboye in tow.

The claimant further avers that the owners of the steamer have, under their engagement with the tug Morse, been com-

pelled to pay to her the $1,700 hereinbefore referred to, and the further sum of $200 for the service of the Morse in bringing back from the Bahama Banks the mate and men and boat of the Clandeboye, and following the Clandeboye and landing them on board of her; besides incurring other expenses aggregating several hundred dollars, for services and disbursements of their agents in Savannah, which services and disbursements became of no value, owing to the acts of the libellant.

The claimant further alleges that by coming to the United States for repairs it has become necessary to discharge in warehouse and restow the greater portion of the cargo of the Clandeboye, at a cost exceeding $2,000, which cost would have been avoided if the Clandeboye had proceeded direct to Vera Cruz; and that, moreover, the cargo is subject to damage through the rehandling incident to its discharge and restowge; besides subjecting the Clandeboye and her corgo to great delay, making damages sustained by the claimant, by reason of the steamer coming to the United States rather than to Vera Cruz, of fully $10,000.

Wherefore the claimant prays judgment that the libel herein be dismissed with costs.

BUTLER, STILLMAN & HUBBARD,
and WHITEHURST & HUGHES,
Protors for Claimant.

STATE OF)
) s.s.
COUNTY OF)

Wm. H. Strickland, being duly sworn, deposes and says that he has read the foregoing answer and knows the contents thereof; that the same is true, of his own knowledge, except as to the matters therein stated, to be alleged upon information and belief, and that as to those matters he believes it to be true.

WM. H. STRICKLAND,
Master S. S. Clandeboye.

Sworn to before me, this 14th day of June, 1894.

FLOYD HUGHES,
Notary Public.

STIPULATION RESPECTING VALUES.

Filed June 22, 1894.

It is stipulated and agreed that for the purposes of this case the value of the steamship shall be taken to be sixty thousand dollars ($60,000), and the value of the cargo shall be taken to be seventeen thousand dollars ($17,000), the latter valuation including the freight money.

EVIDENCE.

Depositions for Claimant.

Taken at Norfolk, Va., June 22, 1894.

MR. WILLIAM HENRY ROBSON, being duly sworn, deposed as follows:

Examined by MR. HUGHES.

Q. State your name, age, residence and occupation? A. William Henry Robson; 25; Bristol; engineer.

Q. How long have you been a marine engineer? A. Three years and eleven months.

Q. How long have you been an engineer? A. Nine years.

Q. What position do you hold on the steamship Clandeboye? A. I am chief engineer

Q. How long have you been on board of her? A. I joined her on the 25th of last March.

Q. Who keeps the log on the steamship Clandeboye? A. The chief engineer.

Q. That is, yourself. Have you the engine-room log of the Clandeboye, if so, produce it and file it for identification? A. Yes, sir.

(The engineer's log is here produced and a copy of the entries therein, from the 22nd of April to the 26th of May, 1894, inclusive, is herewith filed, marked Exhibit 1.

Q. You were on board the Clandeboye, as chief engineer, on the 22nd of April, were you not; if so, please state what happened. A. The shaft broke.

Q. On what voyage were you? A. My first voyage as chief engineer in that ship.

Q. I mean on what voyage was the ship, from where, and bound to where? A. From Cardiff to Vera Cruz.

Q. Just describe the breaking of the shaft? A. At twenty minutes to one, on the 22nd of April, I heard the engines race very heavily, so of course I went below as soon as possible, and the engines, when I went below, were just turning over; the third engineer had stopped the engines, so as soon as the engines raced I knew there was something either the matter with propeller or the shaft, and I immediately went to the stern of the ship and I could see by the water that the propeller was still there, so I came to the conclusion, after testing everything, that the shaft was broken or the tail-end-shaft.

Q. Where broken? A. In the stern tube.

Q. Well, what was the effect of that breaking? A. The engines were disabled. It was impossible to repair it.

Q. What effect did the racing of the engines have on the engines! A. Made the bearings and different parts of the running gear hot.

Q. Did that make necessary any repairs since the vessel has gotten in, or not? A. Oh, yes, sir.

Q. Those repairs are under way now? A. Yes, sir.

Q. Upon the engines being stopped, what effect did that have on the boiler? A. The boiler began to blow off at the safety valves, because the fires were under way and had just been cleaned out and were in good condition—

Q. What was done then? A. The fires were drawn and the boilers were pumped up from the sea to stop the steam.

Q. Has it been found that the boilers were injured in any respect or not? A. No, the boilers seemed to be all right.

Q. What effect, if any, did the accident have on the vessel in respect to her making water? A. None whatever, as I saw.

Q. Just describe what took place from that time, up to, say, the 9th of May? A. Well, of course, the ship being disabled, we gradually drifted from one place to the other. The sails were put up occasionally, when there was a little wind around, and one or two days, while drifting, there was a heavy sea on, but nothing out of the way.

Q. What was done on the vessel, in respect to making

progress with her? What device, if any, was rigged out by her navigators to control her? A. Well, I noticed the sails were put up, at every available opportunity, and, also, a sea anchor was put out on one occasion.

Q. What was the general state of the weather, from the 22d of April to the 9th of May? A. The weather was nothing worse than what I should term moderate.

Q. This log was kept by you, at the time, from day to day, and written up on each day? A. On each day.

Q. At what time? A. In the evening, maybe between six and seven, after we broke down.

Q. And the entries made on the log, respecting the weather, were made at the time, and you know them to be correct? A. So far as I can tell. Of course, that's only during the day time; we were not up in the night time.

Q. I see you have stated, in your log, different distances your vessel drifted, from day to day. From whom did you get that information? A. The chief officer.

Q. The entries in the log show that, from the 22d to the 30th of April, the weather was fine and clear, with smooth sea. How was the weather on the 30th of April? A. A strong wind, and heavy sea, on the port beam, the ship rolling heavily.

Q. Just go on, and describe what was done on the steamer, from the 30th of April to the 9th of May? A. Strong wind and heavy sea, on port beam, the ship rolling heavily. On the 2d of May, fresh wind, with heavy swell on port beam. I refer to the log, as my testimony, as to the weather.

Q. What occurred on the 9th of May? A. The ship anchored, off the Bahama Islands, at 5:20 p. m.

Q. Describe the weather at that time? A. The weather was fine, with a little swell on.

Q. How was the wind—from what quarter? A. I couldn't give you the direction of the wind.

Q. Describe how the ship was anchored, by what length of chain, and in what depth of water, if you know? A. I couldn't say, for certain, the amount of cable that was out. I heard there was sixty fathoms put out before the anchor took. That's only what I heard, you know.

Q. You don't state that of your own knowledge? A. No.

Q. You know nothing about it? A. No.

Q. How many anchors were put out? A. One.

Q. Which? A. On the port bow.

Q. Do you know what anchors the ship was provided with? If so, state? A. The only anchors I saw were two forward, and a small one aft. The anchor was hung out from the starboard bow, ready for dropping, if required.

Q. You know of two anchors hanging out, one on the port and one on the starboard bow, and you know of another one aft? A. A small one.

Q. Did you see two more, as well as that? A. Oh! No, I didn't see them.

Q. You don't know of any others? A. No.

Q. Just desbribe the weather from that time up to the time of the arrival of the Dauntless? You can refer to your log in giving your answer. A. Well, the weather was never above what I should term moderate, and I noticed the cable occasionally, and it was never taut.

Q. The ship seemed to be riding easily? A. Yes, sir.

Q. Only one anchor out? A. Yes, sir, only one anchor out.

Q. The weather was generally moderate? A. Yes.

Q. Do you recollect any periods at which the weather was not moderate during that time? A. No, I can't recollect any.

Q. Did you stand on watch at night at all? A. I did not, no; only the third engineer, to watch the cable in the night time.

Q. What happened on the 19th of May? A. The tow boat got up to the ship about noon, and took us in tow at 2:15, and seemed to tow the boat quite easily until Saturday night, the time I was up, and on Sunday morning I was on deck about 9 o'clock, and the weather was a little rough and seemed to check the speed of the boat somewhat.

Q. How long did that continue? A. As far as I remember, it was until the afternoon.

Q. How did that weather compare to the weather you had had at the time you were at anchorage? A. There was nothing worse than we had while at anchor, from what I saw of it.

Q. It was a little rough, but not what you would term heavy? A. Oh, no.

Q. And it continued until Sunday afternoon. How was the weather from that time up to the time you got to Brunswick? A. That was the only occassion upon which the weather was anything other than ordinary smooth.

Q. Fine weather, with that exception? A. Fine weather.

Q. How about the weather from the time you left Brunswick to the time you arrived in Hampton Roads? A. That was the same; fine weather.

Q. Since the vessel has been at Newport News has the cable to which the port anchor was attached been examined by you? A. Yes, I have seen it since it has been there, and I saw it when it was drawn in, before the tug boat took us in tow. I stood on the forecastle head the whole time it was being drawn in.

Q. Describe the cable, in respect to its being chafed or not? A. I noticed no chafing about it, but I noticed the anchor had some white on it, showing it had been well into the coral.

Q. You examined it, then, both as it was being taken in, before you got under way, and since the vessel arrived in port? A. Yes.

Q. And there is no sign of chafing on the cable? A. I couldn't see any signs.

Q. You stated that the injury was in the tail-shaft. Was your ship provided with an extra shaft or not? A. There was a spare tail-end-shaft on board.

Q. Has that been utilized now? A. Yes, sir, being put in; also a spare propeller.

Q. As I understand, the propeller was not injured? A. No, sir; not injured.

CROSS EXAMINATION.

By Mr. Robert Hughes:

Q. Where was that spare shaft and spare propeller on the ship? A. The spare tail-end-shaft was on the 'tween deck of No. 4 hold, and the spare propeller lies between the No. 3 and 4 winches, on the main deck.

Q. Did you make any effort, during the time you were disabled, to put in that spare shaft? A. None whatever.

Q. Could you have done it if you had? A. No, sir.

Q. Did you make any effort to put in that propeller? A. No, sir.

Q. Would it have been necessary for you to do so if you had? A. Oh! no.

Q. The propeller was not hurt? A. The propeller was not hurt.

Q. I understand that soon after the accident you went astern, and you told by the water that the propeller had not been slipped; that it was still there? A. And afterwards, after the ship had lost her way, it was possible to see the propeller from the stern of the ship and also to see the tail end of the shaft in the cross cutter.

Q. But when you first went aft you could tell from the water that the propeller was still there? A. Just so, sir.

Q. How did the water indicate that? A. Just the same as when the ship is under way, a kind of churning of the water.

Q. Did you ever command a ship, as Captain? A. No, sir.

Q. Do you know anything about operating sails on a ship? A. Nothing whatever. Don't know anyting about seamanship.

Q. Do you know anything about the way to use any of these devices you have spoken about? A. The sea anchor? I have heard of that before.

Q. Have you ever had any experience with it before? A. Never seen one out before this time.

Q. Are those things in the engineer's department? Is an engineer supposed to know how to operate the sails, to rig out sea anchors or anything of that sort? No, sir, we don't learn that.

Q. Are engineers supposed to keep in their logs the state of the weather or the direction of the wind or the course of the ship? Is that in the engineer's department? A. The state of the weather and also the direction of the wind. We always put down the direction of the wind in relation to the ship, we don't put down north-west or north-east, because we don't know which way the ship is steering, but put it down on the starboard beam or port, or whatever it may be.

Q. In other words, the observation the engineer makes as to the weather is a mere chance observation; it is not their business to notice the wind and weather? A. No, sir.

Q. I believe you did say, though, that after you came to anchor the ship rode easy and the cable was never taut? A. When I looked. I couldn't say it was taut, but on the occasions I looked. I looked several times. Of course during the night time I don't know anything.

Q. You looked in the day. How many times did you look? Did you look every day? A. Yes, sir, sometimes two or three times a day.

Q. Then you looked at it several times a day? A. Yes, sir.

Q. And during the times you looked at it, while lying there, you never saw it taut? A. No, sir, it was always lying plumb with the ship's side.

And further this deponent saith not.

Signature of witness waived.

MR. JAMES RYAN, a witness for the respondent, being duly sworn, deposed as follows:

Examined by MR. FLOYD HUGHES.

Q. State your name, age, residence and occupation? A. James Ryan; aged 24; Waterford, Ireland; engineer.

Q. How long have you been an engineer, and how long have you been a marine engineer? A. Since about four years and a half. I have been following the sea about four years and and a half.

Q. How long have you been an engineer? A. Since '82; six years prior to that.

Q. Were you on board, and in what capacity, on the steamship Clandeboye, on a voyage from Cardiff to Vera Cruz? A. I joined in Cardiff, on the 31st of March, and sailed for Vera Cruz on the 1st of April.

Q. What happened on the 22nd of April? A. I was on watch, and the engines gave a great race, and I immediately shut the throttle-valve and shut the main and stop valves in, but it kept racing for a bit after everything had been shut down; and the after bearings were a bit warm. I went down the tunnel to see if any of the coupling bolts had given way, and found the the shaft all right as far as the tunnel, so

I lifted up the bearings to see if everything was all right there, and found everything all right. There's one of the bearings now shows a little heat. Everything seemed all right, so we thought the propeller was loose on the shaft, but after the chief made an examination he found the shaft was broke.

Q. Where was the shaft broke? A. The tail-end-shaft was broke next to the sleeve. Of course we could not see the break, but we proved it was broken. We saw the cotter was in the shaft. We found out the propeller was not loose on the shaft, through the cotter being in, so I started the engines, and the chief and second engineer watched the propeller to see if it went around, and it didn't start and the cotter didn't turn around, so we came to the conclusion the shaft was broken.

Q. The ship then became disabled? A. The ship was disabled.

Q. Describe what was done, generally, on board, until the 9th of May? A. We drifted about from Sunday the 22nd, and on the eleventh day, I think, the Prudentia came and the captain went on board of the Prudentia; but he didn't take us in tow—I don't know the reason.

Q. The Prudentia left you and continued her course, and you continued to drift. A. We continued to drift until the following Wednesday, when we came to anchor.

Q. That would be Wednesday, the 9th day of May? A. Wednesday, the 9th of May.

Q. How was the weather, generally, from the 22nd of April up to the time you came to anchor? A. Well, it was pretty rough sometimes. I didn't make any entries—I am not supposed to keep any log as to the state of the winds, and it was not what you could call bad weather. We had a couple of storm breezes.

Q. Well, on Wednesday, the 9th of May you took—. A. The anchor took hold.

Q. Off the Bahamas? A. Yes, sir.

Q. Do you know in what water the anchor took? A. I could not exactly tell.

Q. How many anchors were out? A. One anchor was

out and the other was ready to get out, in case anything should occur.

Q. Which anchor? A. The port anchor.

Q. Now describe the weather from Wednesday, the 9th of May? A. I was ordered to keep watch on Thursday night, the night following the night we came to anchor.

Q. Which day did the mate leave? A. Left on Wednesday morning.

Q. The ship took anchor on Wednesday evening. A. On the Thursday morning—on the morning after.

Q. And that night, I understand, you went on watch? A. Yes, sir; during that time in the morning, on two occasions, there were heavy squalls of short duration, about an hour or two; I couldn't tell you the exact time.

Q. You had a squall the first night you went on watch? A. No, sir.

Q. When was it you a had squall? A. I think it was on the second or third night, in the morning, we had the squalls.

Q. You went on watch at 6; what time did you go off watch in the morning? A. After it was clear daylight—about five o'clock.

Q. When you speak of having a squall in the morning, you mean before you went off watch? A. Yes, sir, during the time I was on watch there were heavy squalls on two occasions.

Q. With those exceptions, how was the weather? A. With the exception of those squalls, the weather was pretty fine.

Q. When did the Dauntless come up? A. She came up on Saturday morning.

Q. The Saturday succeeding the Wednesday she went at anchor, or the Saturday week? How long was she at anchor? A. I think ten days.

Q. That would be the Saturday week? A. That was the Saturday week.

Q. How was the vessel riding, in respect to her anchor? A. During the time I was on watch, in the night time, I never saw any strain on the cables.

Q. And that was one of your duties, to watch the cable? A. To watch the cable.

Q. You say you went on duty on Thursday night. How many nights did you watch? A. I watched until the following Thursday night.

Q. You watched eight days altogether, then? A. Yes, sir, Thursday night until Thursday night.

Q. There were only two nights that you did'nt watch while at anchor, the night you went to anchor and the night before she left? A. Yes, sir.

Q. Well, the Dauntless came up on Saturday, the 19th of May, and took you in tow. How was the weather from the time you left, in tow, up to the time you got to Brunswick? A. Well, I remember on the Sunday was a storm breeze and a strong head wind.

Q. How did that weather compare to the two squalls you have described that occurred while the ship was at anchor? A. I fancy the squalls were heavier than on that Sunday.

Q. Did the ship experience any difficulty in riding through those squalls? A. No, sir, none whatever.

Q. Only one anchor out? A. One anchor out and the other was ready, but never put out.

Q. Were you on duty, on Saturday night, after the Dauntless took you in tow? A. No, sir.

Q. So, as to the weather on Saturday night you know nothing, but, as to the weather on Sunday, you have spoken? A. Yes, sir.

Q. How was the weather, after this Sunday, until you got to Brunswick? A. Well, I couldn't exactly tell you the state of the weather afterwards, because I would be working all day, down in the engine room, and at night I didn't go much on deck.

Q. Do you know anything about the weather from the time you left Brunswick up to the time you got to Newport News? A. She came along pretty well after that.

Q. As far as you saw, there was no difficulty in the towing? A. No, there was no difficulty, whatsoever, in the towing.

Q. Did you see this anchor hauled up before the Dauntless took you in tow? A. I was on the forecastle head at the time they were getting in the anchor, and I think they had, as far as I remember, twenty-eight fathoms out, and then they came away.

Q. You saw the cable up to within twenty-eight fathoms of the anchor? A. Yes, sir. I came away then because I had to get pins for the gear while they were getting up the anchor.

Q. Did you have any difficulty in getting up the anchor? A. No, no difficulty.

Q. How was the cable, as far as you saw, in respect to being chafed or not? A. I didn't take much notice of the cable. I don't know anything about that.

CROSS EXAMINATION.

By Mr. Robert Hughes:

Q. I believe you are also in the Engineer's department, are you not? A. Yes, sir.

Q. I suppose the weather is your specialty, isn't it? A. Well, I don't take much notice of the way the wind was blowing, sir; I couldn't tell you, in fact. I know when there is a strong breeze and when not.

Q. You seem to know right much about the weather this time? A. I was on watch while at anchor, in the night time.

Q. On watch where? A. To watch the cables. That was one of my duties, to watch the cable and see there was no strain on it, and while I was there I didn't see any strain on it.

Q. Where was the cable fastened? A. Fastened to the windlass.

Q. Where was the windlass? A. In the forward part of the ship.

Q. Out near the bow, I suppose? A. Yes, sir.

Q. And you were stationed there? A. I was stationed there to watch and see nobody came to interfere with it while we were at anchor, because there were a number of boats there, and they might come and cut it.

Q. How many men did your vessel have? A. I couldn't tell you exactly the number.

Q. Tell us about the number. A. I should fancy about twenty-three or four.

Q. And it took a man from the engine room to do that? A. Yes, sir.

Q. These people you speak of (that you were afraid they would cut the cable), did they give you any trouble? A. None whatever.

Q. Look as if they were going to give you trouble? A. There were some boats that came off in the evening to the ship, and looked rather suspicious, and one evening some men wanted to get on board and the Captain wouldn't let them, and he said we would be ashore tomorrow.

Q. Some of the men told you that? A. I heard them say that.

Q. Suppose they had attempted to interfere with the cable, how would you prevent it? A. I had a revolver, and if anybody came to interfere with it, it was my duty to use it.

Q. So you were armed? A. Yes, sir.

Q. Who relieved you in that duty? You didn't stay there day and night? A. Only during the night I stayed there.

Q. How many nights? A. Eight nights, from Thursday night to the following Thursday night.

Q. Did these boats, or any other boats, render you any assistance of any sort, or were any of them engaged to render you assistance of any sort? A. There was a boat came aboard, doing duty for the ship, and their men brought letters to us from Nassau. We sent a boat there after we had been lying at anchor a long time, after the mate went to get a tow boat. I couldn't say exactly what he was there for.

Q. Didn't the Captain make any arrangements to take you all off in case it became necessary? A. While we were drifting all the boats were over and stocked with provisions, etc.; in case the ship might strike, all we had to do was to launch the boats. The boats were put over before we came to anchor at all.

Q. They were the ship's boats? A. Yes, sir.

Q. After you came to anchor, did he make any arrangements with any boats to save the crew if it became necessary? A. Not that I know of. He might, but I didn't know anything about it.

Q. All the preparation you know was the ship's boats? A. Yes, sir, they were over the side.

Q. And all that was necessary was packing them with provisions and clothing? A. No clothing that I know of. Of

course we had our clothes ready in case the ship should strike, to have a chance of saving them.

Q. You had that cable and anchor in special charge? A. Yes, sir.

Q. And you observed the cable when they first commenced to haul it in just before the Dauntless started with you? A. There was about twenty-eight fathoms out when I left, but I was watching the winch, mostly, to see if it worked all right, and I saw it heave in the cable all right.

Q. You mean it came in without any difficulty? A. Without any difficulty.

Q. The anchor came up sort of hard? A. I couldn't tell you.

Q. If the cable came up easy how did the anchor come up? A. I couldn't tell how she came. When they came up on the anchor like, I don't know how many fathoms we had; I was bringing up pins to put in the tow rope.

Q. You say you don't know how many fathoms there were out to that anchor? A. As far as I could learn, about ninety fathoms, I think.

Q. You think there was ninety fathoms out to that anchor? A. I can't be sure; that is what I heard. I think I heard them say ninety fathoms.

Q. You observed twenty-eight fathoms come up? A. I heard the mate say the twenty-eight fathom shackle was in the water, and I came away.

Q. And up to that point it came up easy? A. I wasn't there all the time.

Q. Up to the time the twenty-eight fathoms came up, it came without trouble? A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Mynderse:

Q. When you say you had your boats out, you mean they were swung outboard? A. Swung out ready for launching.

Q. Not in the water? A. Not in the water. Of course the mate had one of the life boats to look for assistance.

Q. That was after you came to anchor? A. Yes, sir.

Q. But these other boats had been swung out in the davits? A. Not all of them, just the life boat, amidships.

Q. Before you came to anchorage at all? A. Before we came to anchorage at all.

By MR. FLOYD HUGHES:

Q. And your clothes had been packed before coming to anchorage? A. I had my clothes packed two or three nights before we sighted the land.

Q. You say the boats were stocked and your clothes packed before you came to anchor? A. I don't know whether all the clothes were, but I know in our department our clothes were packed.

Q. How many men did the mate take with him in his boat? A. Three, with himself.

Q. That left your crew shorthanded then? A. Yes—no, the firemen were to assist on deck.

Q. And in that way you were called upon to stand watch at night at the anchor. A. I was called upon to stand watch at night on the anchor.

Q. Did you have an assistant with you? A. Of course, I had the man on the lookout.

Q. So you and the lookout at night were stationed forward to specially protect the anchor?

And further this deponent saith not.

Signature of witness waived.

MR. THOMAS E. LEWIS, a witness on behalf of the respondent, being duly sworn, deposed as follows:

Examined by MR. FLOYD HUGHES:

Q. State your name, age, residence, and occupation? A. Thomas E. Lewis; 35; Aberystwyth; Bosun.

Q. How long have you been following the sea, and what position do you hold on the Clandeboye now? A. I have been following the sea about twenty or twenty-one years. I am bosun.

Q. Have you ever been officer of vessels? A. No.

Q. Have you had experience in other vessels besides steam vessels? A. Oh, yes, several.

Q. Square and fore and aft rigged. A. Yes, sir.

Q. How long have you been on the Clandeboye? A. A little over two months and a half—about three months the 30th of this month.

Q. You shipped the commencement of this cruise? A. Yes, sir.

Q. Just state what happened on the 22d of April, if you remember? A. I don't know the date exactly; it was on a Sunday we broke our shaft.

Q. The ship became disabled? A. Yes, sir.

Q. Just describe, generally, what was done from that time up to the time the vessel came to anchor off the Bahamas? A. Of course, we did all we could, rigged the sea anchor and set sail, and so forth.

Q. How was the weather during that period? A. Moderate —sometime strong breeze.

Q. Sometimes a strong breeze and sometimes moderate? A. Yes, sir

Q. Do you remember when your vessel took anchor off the Bahamas? A. Yes, sir; I remember it was on Wednesday evening; I couldn't tell the date exactly.

Q. How long was she at anchor? A. At anchor from that time until the Dauntless took us in tow.

Q. When was that, how long afterwards? What day of the week did the Dauntless take you in tow? A. Saturday, mid-day, about 2 o'clock.

Q. Was that the Saturday after you came to anchor or the Saturday week? A. The Saturday succeeding.

Q. The vessel was only at anchor from Wednesday to Saturday; four days? A. No, from Wednesday to Saturday week.

Q. In other words she was at anchor about ten days? A. Yes, sir.

Q. What was the weather during that time? A. Sometimes strong squalls and sometimes moderate.

Q. What was the general character of the weather—moderate? A. Take it through and through, I should think it was.

Q. With occassional squalls? A. Yes, sir.

Q. Did you notice the weather after the Dauntless took you in tow, especially Saturday night and Sunday morning? A. Yes, sir, a strong breeze Saturday night and part of Sunday.

Q. What part of Sunday? A. In the morning—forenoon.

Q. How did that weather compare with the squally weather while the ship was at anchor? A. Just about the same. It might have been a little stronger. Nothing to speak of.

Q. How many anchors were out? A. One was out.

Q. How many anchors has the vessel? A. Six, altogether.

Q. Just describe them? A. Three bowers, a stream, and two kedges.

Q. The two bowers were on the port and starboard; where was the third one? A. On the forward deck, a spare one, lashed.

Q. Which one was out? A. The port one.

Q. How about the starboard? A. All ready for letting go in case of necessity.

Q. Well, how about the cables to the several anchors. Did you have the usual complement of cable or not? A. More mooring chain and two bower cables.

Q. Describe, generally, how the vessel rode at anchor durthe time she was there? A. Road pretty easy there.

Q. Did you notice her during the squalls you have mentioned; if so, describe how she was riding? A. She rode pretty easy all the time I was on deck. I took watch with the second officer and was on from twelve to six while we were at anchor, and while I was below of course I couldn't account for that.

Q. From twelve to six in the day time? A. Yes, sir, and twelve at night to six in the morning.

Q. And in the squalls, that happened during that period of time, did the ship experience and difficulty in riding at anchor? A. Not the least.

Q. The starboard anchor was not put out at any time? A. No.

Q. Did you see the port anchor and the cable, when it was taken up at the time the Dauntless was about to take the steamship in tow? A. Yes, sir.

Q. Describe the cable? A. Well, I didn't see nothing the matter with the cable, only the rust off it, sir, and a little bright in some places.

Q. Have you examined the cable since you came into port? A. Yes, sir, examined the cable.

Q. What did you find to be its condition? A. In good condition, sir.

Q. No signs of chafing? A. No, sir.

Q. What kind of anchors are those the Clandeboye is provided with? A. She has got three patent anchors.

Q. Could you observe how the port anchor was holding? A. Holding very good, as far as I knew, sir; never dragged her anchor any, that I know of.

Q. Well, were you in position to see whether she could have dragged her anchor? A. Yes, sir, we had the lead line down there and could tell by that whether she was dragging or not.

Q. You saw her when she arrived and when she left. Was her position unchanged? A. Not the least sir.

Q. How was the weather, generally, from the time the Dauntless took you in tow up to the time you got to Newport News? A. Fine weather, with the exception of that Saturday night and Sunday forenoon—nothing to speak of.

Q. There is mention made of a squall between Brunswick and Newport News. Were you on watch then? If so, describe that squall? A. The squalls we had didn't amount to nothing.

Q. I mean the squall between Brunswick and Newport News. Do you recollect that squall; or were you on watch? Q. No, sir, I don't remember a squall, that amounted to anything, from Brunswick to Newport News.

CROSS EXAMINATION.

By MR. HUGHES:

Q. You say your ship had six anchors, in all? A. Six, in all.

Q. Lose any while she was disabled? A. No, sir.

Q. You say when your cable was hauled up, just before you started, it showed a little rust off. What got that rust off? A. I suppose a little weight on it while we were laying at anchor. Of course some of the rust would come off in giving her chain.

Q. Then you think the only thing that rubbed the rust off was the friction when you put the chain over? A. It is very little.

Q. You don't think it got rubbed off on the bottom, then? A. It might have been on the bottom. The strain on it didn't amount to anything.

Q. As far as you observed, there was never any strain on it? A. No.

Q. And you observed it during these squalls, or some of them? A. Yes, sir, in my watch while I was on deck. Of course I could not answer for it while I was below.

Q. Did your lead line chafe at all while it was over? A. Yes, sir, we lost the lead line and put another one over.

Q. What caused you to lose it? A. The line parted.

Q. What caused the line to part? A. Rubbing on the coral on the bottom, I expect.

Q. The bottom was a coral bottom, was it? A. Yes, sir, as far as I know.

Q. You observed one anchor come up. Did it show any signs of having been against coral? Couldn't you tell from the appearance? A. No coral on it when it came up. Hard ground, from what I saw.

Q. You saw no signs of coral, then, on the anchor or chain? A. No, sir.

Examined by MR. MYNDERSE:

Q. What was the lead line? A. A small line, sir.

Q. About half as heavy as your little finger? A. Hardly as heavy as that, sir.

Q. And of what material; hemp, cotton, or what? A. Hemp, I think it is.

Examined by MR. FLOYD HUGHES:

Q. Do you know the depth, as showd by the lead line? A. About twenty-eight fathoms.

Q. How much chain did you have out? A. About ninety fathoms, I heard the chief officer say. Of course I couldn't be answerable for that. I heard him say he had the ninety fathoms shackle at the water's edge.

Q. You know the depth of water at which the vessel was lying, and it was twenty-eight fathoms? A. Yes, sir.

And further this deponent saith not.

Signature of witness waived.

SIDNEY GROVES, being duly sworn, deposed as follows:

Examined by MR. FLOYD HUGHES:

Q. State your name, age, residence and occupation? A. Sidney Groves; 29; Scotland; seaman.

Q. How long have you been following the sea? A. fourteen years, sir.

Q. In steam or sail vessels? A. I have only been in two steamers.

Q. Generally in sails? A. Mostly in sails.

Q. Have you ever been officer of vessels? A. No, sir.

Q. How long have you been on the Clandeboye, and in what capacity? A. I will be three months aboard of her the first of the month.

Q. Were you on her at the time she became disabled, on her voyage to Vera Cruz? A. Yes, sir.

Q. Describe, generally, the weather, between the time she became disabled, on the 22nd of April, and the time she came to anchor, off the Bahamas? A. Ordinary fine weather, sir.

Q. Was that continuous fine weather, or did you at times have—. A. At different intervals we had some wind, you know, but nothing great to speak of.

Q. Just ordinary spring weather? A. Just so, sir.

Q. How was the weather, from the time you came to anchor up to the time the Dauntless took you in tow? A. Well, most of the time was pretty fine weather, but we had two or three breezes, but of short duration.

Q. What strength? A. One or two of them were pretty hard blows, while they lasted; one of them one or two days after we came to there, first of all.

Q. Do you remember the weather on the Saturday night and Sunday morning after the Dauntless took you in tow? A. Yes, sir.

Q. How was it? Describe it? A. The wind was right down the coast, about somewheres about north-west, I guess.

Q. What strength? A. An ordinary breeze of wind, I should call it.

Q. How did it compare with the occasional heavy weather you have described that you had while at anchor? A. Well, I shouldn't say it was any worse, on either occosion.

Q. It was no worse that it was on either of those occasions? A. No, sir. There may have been a little more sea.

Q. How many anchors were out while the Clandeboye was anchored there, and which anchor? A. Which anchor we had down, sir?

Q. Yes? A. We had the port anchor out.

Q. What was the condition of the starboard anchor? A. All ready for letting go.

Q. It was not let go, though? A. No, sir.

Q. How did the vessel ride, during these squalls, with this one anchor out? A. Very easy sir—nothing to cause any anxiety.

Q. And the weather, during the Saturday night and Sunday morning, after the towing commenced, was no worse than the squalls you have described? A. No, sir.

Q. How much chain was out on the port anchor; do you know? A. Seventy-five to ninety fathoms, I think.

Q. Do you know the soundings; what depth of water there was? A. Yes, sir.

Q. What? A. Somewheres about twenty-eight or twenty-nine fathoms.

Q. Did you see the cable when the port anchor was raised and the towing commenced? A. Yes, sir, I helped to get it up.

Q. What was its condition? A. Just the same as now.

Q. Well, what is its condition now? Have you examined it since you came into port? A. I have seen it up here in port.

Q. What is its condition, in respect to being chafed? A. Nothing, that I can see.

Q. And you have examined it since you have been in port? A. Yes, sir.

Examined by MR. MYNDERSE:

Q. What's this about the crew having their clothes packed?

What have you to say about that? When were they packed? A. Well, there was a stir about getting them packed when we were getting down there and getting close to the island.

Q. Was that before or after you came to anchor? A. After we came to.

Q. After or before? A. There might have been some; I, myself, hadn't.

CROSS EXAMINATION.

By Mr. ROBERT HUGHES:

Q. You say you didn't observe an chafing of this cable when it was hauled up? A. Yes, sir.

Q. Did it look bright, as if it had been rubbed off, at all? A. No. sir.

Q. Didn't show any bright spots, either on the anchor or the cable? A. No, sir.

Q. Did it have any indications as if it had been down among coral rocks—any whitish appearance, from the coral rocks? A. No, sir.

Q. You saw it as it came up? A. Yes, sir.

Q. You helped raise it and saw it as it came up on the ship? A. Yes, sir.

By MR. MYNDERSE:

Q. Did you consider youself in any danger, while lying there?

(Question objected to as incompetent.)

A. No. sir.

And further this deponent saith not.

Signatures of witness waived.

JOHN THOMAS, being duly sworn, deposed as follows:

Examined by Mr. FLOYD HUGHES.

Q. State your name, age, residence and occupation? A. John Thomas, 26, Cardiganshire, Wales; able seaman.

Q. How long have you been following the sea? A. Close on to ten years, now. Ten years next September.

Q. How long have you been on the Clandeboye, and were you on board on the 22nd of April, when she became disabled? A. I was an able seaman aboard of her.

Q. When did you ship on her? A. In Cardiff, on the 31st of March, I think.

Q. Describe the weather, from the time the shaft broke up to the time you anchored, generally? A. Fine weather, on the whole.

Q. How was the weather, from the time she came to anchor to the time she was taken in tow by the Dauntless? A. Had very fine weather, barring two or three days.

Q. On those two or three days how was the weather? A. Pretty squally, sir. One day out there the boats couldn't come out off the reefs, at all. That was the fifth day, I think.

Q. How was the ship riding at her anchor, during that time? A. Riding all right, sir.

Q. You never had out but one anchor? A. Only one anchor.

Q. Which one was that? A. The port bow anchor.

Q. In what condition was the starboard bow anchor? A. Hanging, ready to drop, sir.

Q. But it was not? A. It was not dropped, no.

Q. Do you know the length of cable you had on the port anchor? A. I believe it was ninety fathoms.

Q. Do you know the depth of water there? Twenty-nine fathoms.

Q. Do you remember the weather, on the Saturday night and Sunday morning, after the Dauntless took you in tow? A. Yes, sir.

Q. How did it compare with squalls you mentionod while you were at anchor? A. I think we had heavier squalls while we were at anchor, especially the fifth day; I think it was.

Q. The squalls you had while you were at anchor were heavier than while you were in tow? A. Yes, sir.

Q. And you had no difficulty in riding at anchor, in those squalls? A. Not the least, sir.

By Mr. Mynderse:

Q. What do you have to say about the crew having their

clothes packed? A. We had our clothes packed before we came to anchor; after we came to anchor we unpacked them. I did, anyhow. I don't suppose everybody did.

(Counsel does not desire to cross examine.)

And further this deponent saith not.
Signature of witness waived.

HARRY T. HAY, being duly sworn, deposed as follows:

Examined by MR. FLOYD HUGHES.

Q. State your name, age, residence and occupation? A. Harry T. Hay; 37; Edinboro; seaman.

Q. How long have you been following the sea, and how long as officer of vessels? A. Twenty-two years at sea, and I have been officer since March, 1882.

Q. Officer of steamers, or sail? A. Steamers and sail.

Q. Your experience has been both steam and sail? A. Yes, sir.

Q. What position do you occupy on the Claudeboye, on her voyage from Cardiff to Vera Cruz? A. Mate.

Q. As mate, did you keep the log, or not? A. I kept the log, sir.

Q. Please produce the log for identification, and file copies of the entries therein, from the 22d of April to the time you left, on the 10th of May?

(The log is produced and the copy of the entries, from the 22d of April to the 10th of May, is herewith filed, marked Exhibit 2.)

Q. You kept the log up to the time you left the vessel? A. Yes, sir.

Q. When was it written up? A. Written up to the 8th.

Q. I mean, is the entry of the 9th in your handwriting? A. Here's where I left, on the 7th.

Q. The entries up to the 7th of May are in your handwriting? A. Yes, sir.

Q. Just describe what happened on the 22d of April? A. The weather was fine, and about twenty minutes after one, while at dinner, I heard a noise, as if the engines were flying

around, and went on deck and looked over the stern? I thought her propeller had dropped off, but couldn't see anything there; the propeller was revolving with the ship's way through the water, and after the ship had stopped I could see the propeller in the water. Then we put a boat out, to see if the cotter was out or the propeller was slipped aft on the shaft, but we could see the cotter in its place, and came to the conclusion the shaft was broken. We raised the usual signals for breaking down, three shapes, and set the fore and aft sails.

Q. Just describe what was done from that time up to the 9th of May, when you came to anchor, off the Bahamas? A. Well, there were several things done, at different dates.

Q. A record of them is kept in your log, and the entries made by you are referred to? A. The entries in that log are correct.

Q. You took observations, from day to day, and noticed the distance of the drift, and the direction. A. Yes.

Q. You have a record of a thunder squall on April 20th, 24th, 25th, 28th, a strong breeze on the 30th of April, and a fresh breeze on May 1st and 6th? A. My testimony, in respect to the weather, and all transactions, is as recorded in the log.

Q. On the 3d of May you have an entry that the steamship Prudentia was sighted, and the Captain boarded her? A. Yes, sir.

Q. Did you go aboard, with the Captain? A. No, sir.

Q. The entries here, as to what took place between the captain of the Prudentia and your captain, did not come within your own knowledge? A. No. The Captain told me, as soon as he came on board, what had happened.

Q. Describe the sea anchor that was used during the time the vessel was drifting. A. We took the leg of mutton trysail and bound a spar on it, and some fire bars to sink it, and then a wire hawser was attached and paid out, some distance from the ship, so we could ride by it.

Q. On Wednesday, the 9th of May, the vessel came to anchor in what water? A. Thirty fathoms.

Q. What chain did you pay out? A. Ninety.

Q. What anchor? A. Port anchor.

Q. What was the condition of the staboard anchor? A. good.

Q. I mean in respect to being ready to be—. A. It was unbent from the chain, and immediately we came to anchor it was bent on, ready to be put over.

Q. What other anchors did you have? A. Another bow anchor, patent, two large stream, and a kedge.

Q. What chain? A. One hundred and thirty-five fathoms of cable chain on each anchor, and ninety fathoms of hawser chain.

Q. In addition to those chains, did you, or not, have any chain as part of your cargo? A. Yes, sir; we had chains; I couldn't say exactly the size of them. Mooring chains, I suppose.

Q. You saw them? A. Yes, sir.

Q. How were they, in respect to the purpose of anchoring? Could they have been used with effect? A. Yes, could have been used with effect.

Q. The starboard anchor was not used, up to the time you left? A. No, sir.

Q. The vessel came to anchor on Wednesday evening, and you left on Thursday? A. Yes, sir.

Q. How was the weather when you left? A. A fresh breeze.

Q. How did she ride at anchor? A. Rode quite well,

Q. How was the anchor holding? A. Holding very well.

Q. Held until you left? A. Yes, the anchor never dragged on the ground when the ship brought up.

Q. How was her position? A. With reference to the island?

Q. Yes, and with reference to her anchorage? A. I should say she would be about a mile and a half to two miles off the reefs, the island bearing south by east one end of the island, and the other about south by west.

Q. Then you left with what seamen with you? A. The carpenter and two seamen.

Examined by MR. MYNDERSE:

Q. What boat did you go off in? A. The port life-boat.

Q. Where were the others when you left? A. The starboard life-boat was out over the side, ready, in case it might be wanted, and the other two boats were all ready, on the chocks.

Q. When had the starboard boat been put out? A. Some time. The port one immediately before the ship came to anchor.

Q. In coming to anchor, you put out how many fathoms of chain? A. We lowered the anchor to the thirty fathom shackle, so it would bring the ship up when it got to that depth of water.

Q. That is, you lowered it with thirty fathoms when the ship was still drifting? A. Yes, sir, so when the anchor touched the ground you see it was bumping on the ground, and we knew she was on it, and gave her the chain.

Q. And after she brought up you gave her extra chain until you had given her ninety fathoms? A. Yes, sir.

Q. That carried her a little further in shore than the anchor was? A. Yes, sir, and when the ship was broughut up on ninety fathoms there was twenty-eight fathoms of water under her.

Q. When you left the steamer in this boat where did you go? A. Went down to the Gulf Stream and crossed over to the Florida coast, trying to pick up some steamer.

Q. With the idea of getting some cargo steamer to come to take you in tow? A. Yes, sir.

Q. How long were you in reaching the Straits? A. Friday evening, when we made the Florida coast.

Q. And you left the vessel on Thursday morning? A. Yes, sir.

Q. On Friday evening you made the Florida coast? A. Yes, sir.

Q. What luck did you have in falling in with any steamers? A. We passed one steamer at 4 o'clock Friday evening, but she was too far off to notice us.

Q. Was that the only one you saw? A. Yes, and a Norwegian bark and an American schooner, going north. Saturday we dodged across the Stream again, and stood back again, but couldn't see any steamers bound north or south, and at 3 o'clock Saturday evening we hadn't seen any steamers, and as we thought we might dodge around there for some time we made up our minds to go to port to get a tug boat.

Q. And you started for what port? A. Savannah.

Q. And arrived at Tybee when? A. Six o'clock the following Tuesday.

Q. And went up to Savannah? E. Yes, sir; got the tug boat ——— No. 2.

Q. What did you first do when you got to Savannah? A. I wanted the tug boat Captain to coal up and go back that afternoon.

Q. What tug boat captain? A. The Cynthia (?); and he went to see Captain Smith, manager of the tug boat company, but they didn't seem to care much about it; didn't have a suitable man to navigate the boat to the place, etc., and the Captain of the Guildhall advised me to see Mr. Minis, to see if we had an agent in Savannah.

Q. He was a ship agent? A. Yes, sir.

Q. Was he there himself? A. No, sir; he was in Europe, but Mr. Harris was there.

Q. What assistance did you get from Mr. Harris? A. I asked him if he knew our agents there. He said they hadn't any agents there; that they had done the business for the last steamer of our company that was there.

Q. The managing owners of your vessel are Carlisle & Co.? A. Yes, sir.

Q. And he told you he had done the business of the last vessel of Carlisle's that had been there? A. Yes, sir.

A. What did he propose to do then? A. That we wire the owners the ship's position.

Q. You did cable the owners? A. Yes, sir.

Q. That was done on Tuesday morning? A. Yes, sir.

Q. Was anything more done that day? A. Yes, sir; we had a reply at 3 o'clock: "State definitely ship's position, distance of ship from Savannah, also from Havana;" and there was a reply sent to that on Tuesday evening. We got another telegram on Wednesday morning; "Have boat give estimates for towing."

Q. That was a telegram received from the owners? A. Yes, sir.

Q. That came on Wednesday morning, the 16th? A. Yes, sir.

Q. Did Mr. Harris then proceed to get estimates for towing?

A. Yes, sir; from Boston, New York, Philadelphia and Charleston.

Q. And when he got them did he act upon them or communicate with the owners first? A. He communicated with the owners.

Q. Do you know whether he received any estimates from the Morse Tug Boat Company? A. Yes, sir.

Q. And when did you receive instructions from the owners as to what should be done for the Clandeboye? A. Well, on Wednesday the telegram said to get estimates for towing, and I think Friday was the day—Thursday was the day we agreed with the Morse.

Q. And you had instructions from the owners—? A. To accept the Morse's offer for $5,000 to Vera Cruz.

Q. That is, to proceed to her anchorage and tow her to Vera Cruz? A. Yes, sir.

Q. These cablegrams were in writing? A. Yes, sir.

Q. Where was the Morse? A. The Morse was in Philadelphia at the time.

Q. And her agents in Philadelphia? A. She has got agents in New York and Boston.

Q. And this agreement with the Morse, how was that conducted—by telegram with these agents? A. Yes, sir.

Q. It was entirely in writing, then? A. Yes, sir.

(MR. MYNDERSE: I have here copies of the entire correspondence between Morse & Co. and Minis & Co., and I will produce the originals of such correspondence or will examine witnesses respecting them.)

Q. Did you see the correspondence between Minis & Co. and Morse & Co.—the telegraphic correspondence? A. Yes, sir.

Q. Will you look that over and see whether that is a copy of it, or how many of those telegrams you saw? A. I saw the telegrams down to and including those of May 19th.

(Counsel here offers the copies of the telegrams between Morse & Co. and Minis & Co., a copy of which is hereto annexed, marked Exhibit 3.)

Q. What time did you get on the Morse? A. On Monday evening.

Q. You boarded her? A. At the fairway buoy, outside Tybee.

Q. When had you left Savannah? A. Sunday night.

Q. And went down on a tug for the purpose of boarding the Morse? A. Yes, sir.

Q. When did you first hear of the tug going out from Brunswick? A. Sunday night, at 6 o'clock.

Q. What day of the month? A. The 20th.

Q. Where were you when you heard about the tug? A. On board the Forrest City, the tug that was taking us out to the Morse.

Q. How did you hear it? A. By a gentleman passing along the dock asking me if there was a tug left Brunswick for the ship, on Saturday, and another had left that evening, to assist her.

Q. Had you heard anything of them up to that time? A. Nothing.

Q. Had they communicated with Mr. Minis, at all? A. Yes, sir.

Q. Had you seen all the telegrams and cables he had had with different tugs? A. Yes.

Q. There were offers from other tugs received by Minis besides those received from the Morse? A. Yes; offers from Boston, and two companies in New York and one in Philadelphia.

Q. This one of the Morse was considered the most favorable? A. Yes, sir.

Q. When did the Morse reach the Bahamas? A. Seven o'clock, Wednesday morning.

Q. And the Clandeboye had then gone. The Morse then did what? A. There were some fishing boats around there, and we hoisted a flag and blew the whistle for one of them to come off; and he said the ship was there Saturday, as he came from Nassau, and he noticed she was gone that morning.

Q. When you found she was gone the Morse left then? A. No, sir, this fellow went in and got another boat that belonged to Stranger's Cay and he said another small tug came on Saturday and took her off.

Q. And then you returned to Tybee? A. Yes, sir.

Q. And there learned the Clandeboye had proceeded to Newport News? A. Yes, sir.

Q. And the Morse brought you along? Where did you overtake the Clandeboye? A. About twenty or thirty miles south of Cape Henry.

Q. And the Morse then put you on board the Clandeboye? A. Yes, sir.

Q. I notice that on the 16th of May Minis & Co. telegraphed to the owners of the Morse: "Have cabled your offer. Will communicate with you as soon as reply received," and that on the following day, May 17th, Minis & Co. telegraphed to the agents of the Morse: "Accept your offer of yesterday to tow Clandeboye to Vera Cruz for $5,000. In event steamer leaves Bahamas before Morse reaches there you to receive $1,500; Morse to leave Philadelphia today. Can you call at Tybee, on your way down, for chief officer, three men and life boat. Will have them in readiness if you will indicate what time you will be there. Wire reply immediately." Do you remember that telegram on May 17th? A. Yes, sir.

Q. Do you happen to know what time of the day that was sent? A. Sent in the forenoon, I think.

Q. You received a cablegram, from the owners, in the morning of the 17th? A. Yes, sir.

Q. You know position of the Clandeboye, before you left her at her anchorage? A. Yes, sir.

Q. What, in your opinion, was the character of her anchorage? A. Good, sir.

Q. You think it was a safe and secure anchorage? A. Yes, sir.

Q. Did the Clandeboye sustain any injury to her hull? A. No, sir.

Q. The only thing that was the trouble was that her propeller wouldn't turn? A. That's the only thing.

Q. And you understood that to be due to a break in the shaft? A. Yes, sir.

Q. Have you been with the Clandeboye while she was undergoing repairs at Newport News? A. Yes, sir.

Q. And what was found to be the trouble? A. The shaft was broken.

Q. The tail-end-shaft was broken? A. Yes, sir.

Q. Where? A. In the outer sleeve.

Q. In the stern tube? A. Yes, sir.

Q. The accident, then, was just such a one as you had judged it to be? A. Exactly, sir.

Q. The steamer didn't make water? A. No, sir.

Q. But the injury was one that required her to make a port for repairs? A. Yes, sir.

Q. You had an extra tail-shaft? A. Yes, sir.

Q. State whether that could have been used, to replace the broken one, except by docking the vessel? A. I don't see how it could have been done with safety—not at sea, any way.

CROSS EXAMINATION.

By Mr. Robert Hughes:

Q. I understand the bargain you made with the Morse was to tow you to Vera Cruz; was it? A. That was the owner's agreement.

Q. That was the bargain made in consequence of the information you gave, to tow you to Vera Cruz? A. Yes, sir.

Q. Why was it you preferred to accept an offer to take you to Vera Cruz instead of arrangeing to bring her to Newport News? A. I suppose, as that was the ship's destination, they wanted to get the cargo there.

Q. Why was her destination afterwards changed to Newport News? A. The Dauntless couldn't have towed the ship to Vera Cruz.

Q. Why didn't you have her towed, then, to Savannah or Brunswick? A. In Brunswick, or Savannah, they only could tip the ship. In those ports they had no appliances.

Q. Did they have such appliances at Vera Cruz? A. No, had no appliances at Vera Cruz, only tipping, unless they towed the ship away again.

Q. Then they would have been no better off at Vera Cruz than at Brunswick or Savannah, except they would have been able to get her cargo out? A. Exactly.

Q. The vessel came to anchor on the 9th, I believe? A. Yes, sir.

Q. And you left the next morning? A. The next morning.

Q. In that time, what examination did you make of the bottom, or the bearing of the different land that you saw, or anything of that sort? A. It was just before dark when she did bring up, and we got the boat ready for going away the next morning, early; at 5 o'clock—daylight.

Q. And you started the next morning, at daylight? A. Yes, sir.

Q. And you think, in that time, with the duties you had, you had opportunities for judging of the sort of place which you were on, or the sort of bottom? A. I could judge of the sort of bottom; a soft bottom from a hard bottom.

Q. What sort of a bottom was it? A. A soft bottom, where the anchor was.

Q. What do you call a soft bottom? A. Mud or clay.

Q. It was mud or clay? A. Yes, sir, a sort of brown clay, where the anchor was on the ground.

RE-DIRECT EXAMINATION.

By Mr. Mynderse:

Q. What was your cargo, chiefly? A. Patent fuel.

Q. That is, coal which is prepared and pressed into blocks? A. Yes, sir.

Q. Besides that, you had what other kind of cargo? A. Glass, springs, chains, coupling bolts.

Q. Nothing perishable? A. Nothing perishable.

Q. And was all consigned to Vera Cruz? A. The Mexican Railway.

Q. Of course, going there and taking the cargo out, your vessel would have been light. A. Yes.

Q. These offers you had from different boats were to take her to——. A. Some of them were to take her to destination, Havana or Savannah; all made an offer for the three ports, except the Savannah boats. They afterwards made an offer, I think it was either $5,000 or $6,000 to Savannah; no other. They wouldn't go to Havana or Vera Cruz.

Q. The Savannah boats would go anywhere except to bring her back to Savannah, but would not go to foreign countries? A. No, sir.

And further this deponent saith not.

Signature of witness waived.

JOHN JONES, being duly sworn, deposed as follows:

Examined by MR. MYNDERSE:

Q. State your name, age, residence and occupation? A. John Jones; 22; Cardiganshire; second mate of the Clandeboye.

Q. How long have you been on her? A. Just this voyage—two months and a half.

Q. How long have you followed the sea? Five years and a half, actual sea service.

Q. What papers do you hold—what certificate? A. First mate's certificate.

Q. How long have you held a first mate's certificate? A. About four months and a half, sir.

Q. What did you have to do with keeping the log of the Clandeboye? A. I had to keep the logs from the time the chief officer left the ship until he returned.

Q. From the time the chief officer left the Clandeboye, when you came to anchor, you kept the log up to the time he rejoined the vessel? A. Yes, sir.

Q. He went away on the 10th of May. When did you begin to keep the log, what point? The latter part of the 9th of May you commenced? A. I kept it on my watch before he went away, and from there I kept it all myself.

Q. And after the 9th of May you kept it entirely yoursef? A. Yes, sir.

Q. Now, are these entries in here correct? A. Yes, sir, perfectly correct.

Q. The vessel was anchored off Stranger's Cay, and what distance from the land? A. About a mile and three-quarters, or two miles.

Q. From the shoals? A. From the reef.

Q. And the land, itself, was how much further away? A. About a quarter of a mile, I should think, sir.

Q. You were to the north of that island? A. Yes, sir.

Q. You anchored in what depth of water? A. Thirty fathoms.

Q. That is, you put the anchor out at thirty fathoms, and it took ground at that? A. Yes, sir.

Q. And then, afterwards, you let out more chain? A. Yes, sir.

Q. You had out about how much, altogether? A. Ninety fathoms.

Q. And then you were lying at what depth of water? A. Same water—twenty-eight or thirty fathoms.

Q. What kind of ground was it? A. Coral bottom.

Q. How was it as to holding ground? A. Splendid holding ground.

Q. From the time you anchored how did it hold? A. Held beautifully.

Q. Drag at all? A. No, sir.

Q. The vessel was held secure? A. Quite secure.

Q. And you had how many anchors out? A. One anchor.

Q. That was the port anchor? A. Yes, sir.

Q. You had other anchors on board? A. Five, sir.

Q. How about her starboard anchor, how much trouble would there have been to drop that, in case of need? A. Two hours' work, I should think, sir. We had it in on board, so the cable should be prepared for the tow boat.

Q. What kind of anchors were these port and starboard anchors? A. Patent anchors.

Q. And they are carried outboard, are they not? A. In the pipes—hove up to the pipes.

Q. So as to be dropped right down? A. Yes, sir.

Q. What other anchors did you have? A. Two stream anchors and kedges.

Q. Was there, in your opinion, at any time, while lying at that anchorage, any occasion for putting out any other anchor but the port anchor? A. No, sir.

Q. That was quite sufficient? A. Yes, sir.

Q. During the time you were at anchor what kind of weather was it? A. Moderate weather—occasional squalls.

Q. And you lay at anchor there about ten days? A. Ten days.

Q. These squalls were of what character? A. Rain squalls and thunder.

Q. How long would they last? A. Usually lasted about three quarters of an hour to an hour, in the morning, as a rule.

Q. And during the time of those squalls how did the vessel ride? A. Sometimes rode head to her anchor—never very much strain on the cable.

Q. I see in her log she strained on her anchors? A. That was during the day time. At the Captain's instigation, that was. I wrote it after I came up.

Q. That was information you received from the Captain? A. Yes, sir.

Q. Was the straining sufficient to disturb the anchor or cause you to drift at all? A. No, sir.

Q. Do you remember the occasion of the tug boat Dauntless coming to you? A. Yes, sir.

Q. Do you remember what day that was, at what hour? A. Saturday afternoon.

Q. And how long was it before they got you in tow? A. It was 2 p. m., I think, we started.

Q. Who came on board from the Dauntless? A. The Captain and navigating officer.

Q. And they had an interview with Captain Strickland? A. Yes, sir.

Q. Where did they have that interview? A. Down in the cabin, I think, sir.

Q. You were not present? A. No, sir, I was on the forecastle head.

Q. After that, was the anchor taken up? A. Yes, sir.

Q. Did you see it raised? A. Yes, sir.

Q. You were the officer in charge? A. Yes, sir.

Q. What was the condition of the chain and anchor? A. Rubbed some. It was bright in some parts.

Q. What do you mean by rubbed? A. It was rubbed some.

Q. They always rub when in use? A. Yes, sir.

Q. The rust rubbed off? A. Yes, sir.

Q. Did it affect the strength of the chain at all? A. No, sir.

Q. How was the anchor? A. It was just the same.

Q. Did you have any difficulty in getting it from the bottom? A. Yes, sir; a good pull as the anchor was being lifted.

Q. It had taken a good hold? A. Yes, sir.

Q. How hard a pull was that to get it out? A. A very hard pull.

Q. What effect did it have on the windlass? A. Strained the gipsey wheels.

Q. How much did it strain the gipsey wheels? A. Strained it to that extent it rendered it unfit for further use.

Q. It had to be repaired and renewed? A. Yes, sir.

Q. That was occasioned by the difficulty in getting the anchor from the ground? A. Lifting the anchor from the ground, sir.

Q. The Dauntless took you in tow about when? A. Two p. m.

Q. On Saturday afternoon? A. Yes, sir.

Q. And do you recollect about what time they arrived off Brunswick—off St. Simon's? A. Ten a. m., Tuesday.

Q. And from Saturday afternoon to Tuesday morning, what was the weather? A. Moderate, sir. We had a strong breeze on Sunday.

Q. What kind was that; how long did that last? Was it a steady breeze, or a squall, or what? A. A steady breeze from about 2 a. m., on Sunday, until nearly noon.

Q. Anything severe? A. No, sir; not severe.

Q. How did it compare, in force or strength, with the winds you had had during these squalls, while lying at your anchorage? A. Just about the same, sir.

Q. Now, in your opinion, as a seaman, would you have had any difficulty in riding at your anchorage during such weather as you had on Sunday? A. No, sir.

Q. If you had remained at your anchorage? A. Would have been quite safe.

Q. And with the single anchor you had out? A. Yes, sir.

Q. Of conrse you had barometers on board, so you could note any approaching change in the weather? A. Yes, sir. The barometer is noted down there, every four hours, in the log.

Q. I don't know whether you stated, in your opinion, there was any occasion to put out any other anchor? A. No, sir.

Q. There was no occasion? A. No, sir.

Q. You had no conversation with the tug boat men yourself? A. No, sir.

Q. How long a hawser did you have? A. He communi-

cated to me that the chief officer had arrived in Savannah; nothing further than that.

Q. How long a hawser did he tow you by? A. About 120 fathoms, I suppose.

Q. Whose hawser was it? A. His.

Q. Did you have hawsers on board? A. Yes, sir; we had chain hawsers.

Q. Steel hawsers? A. Yes, sir; we had steel wires.

Q. During the time you were at anchor, there were men came out from the islands? A. Yes, sir.

Q. In sail boats? A. Yes, sir.

Q. A number of those boats, were there? A. One day there were about forty or fifty, I think.

Q. Did you allow them on board? A. No, sir; only one at a time; one boat's crew.

Q. When the mate went off, with three men, it left you rather short-handed? A. No, sir; we didn't find it so.

Q. You didn't have very many duties to perform? A. No, sir.

Q. The engines were not working, of course? A. No, sir.

Q. Did the engineers and firemen assist on deck? A. Yes, sir.

Q. The ship was tight all the time she was lying at anchor? A. Yes, sir; quite tight.

Q. This injury she sustained was only in her tail-shaft? A. That's all, sir.

CROSS EXAMINATION.

By Mr. Robert Hughes:

Q. How was your ship heading when you raised your anchor, just before you started with the Dauntless? A. About south-west, I think, sir.

Q. How was the wind at the time? A. It is noted down, sir. The direction of the ship's head was west and the wind west by north.

Q. Then, at that time you had nearly a head-wind, didn't you? A. Yes, sir.

Q. How did that affect the question of raising the anchor? Did it make it easier or harder to raise it? A. Didn't affect it at all—no difference.

Q. Didn't affect it at all? A. No.

Q. You would raise it with a head-wind just as easy as if it had been anywhere else? A. There wasn't a very strong wind—only a light breeze—when they took us in tow.

Q. About those boats that came off from shore. What kind of men were in them? A. White men—and colored men, some of them.

Q. Were they rather a rough looking crew, or not? No; just ordinary fishermen.

Q. How were they in the matter of dress; were they in swallow-tailed coats? A. Dressed like West Indiamen.

Q. How do they dress? A. Straw hats and dungaree coats.

Q. Dressed suitably, in straw hats? A. Dressed suitably for the weather.

Q. Pretty rough looking men? A. Not particularly.

Q. Did you feel any alarm? A. No, sir.

Q. Feel there was danger of their tampering with the cable? A. We were on the lookout; they couldn't do that.

Q. What made you go on the lookout if you didn't think there was any danger in them? A. It is always best to be —.

Q. What did they do when they came out? A. Just asked permission to come aboard, and sailed back.

Q. What did they want to come aboard for? A. Curiosity, I expect.

Q. Well, would you rather have had those men around there or not? A. I should rather have had one of them, Captain Robertson, (the man that was aboard there to assist the ship in case it came on to blow), to pilot her.

Q. Did you hear any of those men make any threats of tampering with the cable? A. No, sir, they didn't make any attempt.

Q. What precaution did you take to prevent them from doing it? A. Had the third engineer on the forecastle head, armed, every night, and I was armed, on the bridge, and a sailor on the forecastle head, as well.

Q. So you kept three armed men watching that cable? A. Yes, sir.

Q. Suppose you were anchored out here, in Hampton Roads, would you observe the same precautions? A. Then we would have two men on the lookout.

Q. Do you have, at the dry dock, two men, armed, watching the boat? A. During the night?

Q. Yes? A. No, sir, there's a watchman on shore; two or three of them.

RE-DIRECT EXAMINATION.

By MR. MYNDERSE:

Q. Who was Captain Robertson? One of those Bahama Islanders? A. A local pilot, sir.

Q. I offer the rest of the log during the time it was kept by the second officer. The statements here are correct? A. Yes, sir, quite correct.

(The copy of the log referred to is herewith filed, marked Exhibit 2.)

Q. I notice, in one place, possibly two places, the vessel was straining on her cables. Did she have more than one cable? A. No, sir. It should have been in the singular. She had only one out.

And further this deponent saith not.

Signature of witnesses waived.

CAPTAIN W. H. STRICKLAND, being duly sworn, deposed as follows:

Examined by MR. FLOYD HUGHES:

Q. State your name, age, residence and occupation. A. W. H. Strickland; master mariner; Staines; aged 37.

Q. How long have you been following the sea, and how long officer of vessels? A. About twenty-two years and about sixteen years.

Q. Steam and sail? A. Yes, sir; master of vessels about seven years.

Q. How long have you been in command of the Clandeboye? A. About thirteen months.

Q. Just describe the Clandeboye. A. Steamer of 1,442 tons register; built of steel, five years ago; triple expansion engines.

Q. Give her length, breadth and depth. A. Length, 285 feet; breadth, 37; depth, 22. I think those are about the figures.

Q. What is your complement of officers and men? A. Twenty-two.

Q. Just state the different departments. A. Master, two mates, cook, steward, carpenter, five able seamen, bosun, three engineers, mess boy, five firemen and a donkey-man.

Q. Did you have that complement on the voyage from Cardiff to Vera Cruz? A. Yes, sir.

Q. How was your vessel, at the time she left Cardiff, in respect to being tight, staunch and strong? A. First-class order; just out of dock.

Q. All went well until what time? A. The 22d.

Q. Just state the cargo you had, and bound to what port? A. Had 2,600 tons of patent fuel and seventy-five tons of general cargo.

Q. Did you have, as part of the cargo, any chain or cables? If so, describe them. A. A lot of chains, sir, cable chains.

Q. Just describe them. A. I think about five tons of chain, about three-quarter inch.

Q. That was adapted for use in anchoring, in case of necessity? A. That's what they are for, sir.

Q. Describe the anchors of the Clandeboye. A. We have three anchors, weighing a ton and a half apiece—three bowers, patent; then we have a stream anchor, weighing about 2,500 weight, and two kedges, one weighing about 1,600 weight, and the other about 800.

Q. You had the full complement of chains and cables for those anchors? A. Yes, sir.

Q. Also had your regular complement of ropes and hawsers? Yes, sir; a well found ship, in every way.

Q. What is your class, in Lloyds? A. A1, sir.

Q. All went well until what time? A. The 22d of April.

Q. What happened then? A. About half past 12 the machinery suddenly began to fly around. After the ship got her way off, we got a boat out, and the mate and two engineers and I went down and examined the propeller, to see if it was there, or the shaft out against the stern-post, and started

the engines again, while the boat was down, and the engines would work, but the propeller wouldn't.

Q. What conclusion did you come to? A. That the shaft was broken, and as it was not broken in the tunnel, where we could see it, we came to the conclusion it was broken in the stern-tube.

Q. That conclusion has been verified since you have been in dock? A. Yes, sir.

Q. What was the condition of the vessel, in other respects? A. In good condition.

Q. Not making water? A. No, sir.

Q. In all respects sound, except disabled in her machinery? A. That's all.

Q. Describe what was done, from the 22d of April up to the 9th of May. A. We tried, in the first place, to get the ship in the Gulf Stream, with the sails, and when we found the way the current was going we tried to drag her there with a sea anchor, but afterwards got to a contrary current, and the sea anchor and sails were taken in, and ——— days after we sighted land. I knew the place, and set all sails, and dragged her in to the best anchorage I could.

Q. You came to anchor on the 9th of May? A. Yes, sir.

Q. What anchor did you put out? A. The port anchor.

Q. How many fathoms of chain? A. Ninety.

Q. Before you got to anchor, what precautions had you taken? A. Lowered the anchor down, to drag her ahead.

Q. And it took the ground at thirty fathoms? A. Yes, sir. Helped to drag the ship along, and assisted the sails, as well.

Q. And on the 9th of May it took in thirty fathoms? A. Yes, sir.

Q. How was the weather, between the 22nd of April and the 9th of May, generally? A. Moderate, sir.

Q. With occasional squalls? A. Yes, sir.

Q. Did you speak any vessels between those times? A. Spoke the Prudentia and several schooners, and asked them to report me.

Q. They, of course, couldn't render you any assistance? A. No, sir.

Q. State what happened with the Prudentia, when you

spoke her, or do you remember the day? A. I don't remember the day.

Q. It is noted in the log as the 3rd of May. You have no doubt that is correct? A. That's about it, sir.

Q. State what happened? A. When we saw her coming up we had the signal flying, "will you take us in tow."

Q. You had your distress signals up? A. Not the distress signals; the broken down signals.

Q. When you sighted the Prudentia you signalled her "will you take me in tow." Then you went aboard, did you? A. I went on board.

Q. Just state what happened there? A. When I went aboard the Captain and I had a talk, and we went around and examined his ropes, what he had, and I told him what ropes I had, and it was all arranged about towing until the last minute, when he asked me into his cabin to give him a piece of paper. I went, and he began to dictate a letter which ran something like this; "I, Captain Strickland, Captain of the disabled steamer Clandeboye, wish to be towed to Havana, my ship having a broken shaft, and being in a most dangerous position," and I said, oh! stop, Captain, and leave this to the owners, at home, and he said, no, I won't tow you unless you give me that paper; and I refused. At the same time, I never thought that he would have gone away; but he did. I refused to sign the paper that the ship was in a most dangerous position, and I then offered to go on board and get my officers and sign it under protest, but he would not allow that.

Q. Well, you then continued in this condition until the 9th of May, when, as you say, she brought up. Where did she take ground? A. Stranger's Cay, about two or three miles off.

Q. How bearing, or do you recollect? A. The centre of the island bore about south and the two ends about south by east and south by west.

Q. And about two and a half to three miles distant, you say? A. Yes, sir.

Q. And you continued there until the Dauntless came up? A. Yes, sir.

Q. Did you, at any time, drag your anchor; or describe how

you rode at anchor from the 9th of May up to the time you were taken in tow? A. She rode all right, sir.

Q. You never found it necessary to put out another anchor? A. No, sir.

Q. What was the condition of the starboard bow anchor, with respect to its being put out? A. It was all there, ready for letting go in a second.

Q. But you never found it necessary? A. No, sir.

Q. How was the weather, from the 9th of May to the 19th, when the Dauntless came? A. It was as fine as could be—only a few squall in the night time.

Q. What was the strength and length of the squalls? A. They would last about an hour, sir—a few flashes of lightning.

Q. Do you recollect the weather on the night of Saturday and the morning of Sunday, after the Dauntless took you in tow? A. Yes, sir.

Q. How did those squalls compare—. A. Just about the same, sir.

Q. And during those squalls the vessel rode at her anchor without difficulty? A. Yes, sir.

Q. You didn't find it necessary to put another anchor? A. No, sir.

Q. What precaution did you take, as soon as you came to anchor, in respect to getting assistance? A. It was rather threatening, and I didn't want to send the boat away then; I sent her away the following morning, for assistance.

Q. The chief officer and three men, for assistance? A. Yes, sir.

Q. Did you take any other precautions, in respect to engaging other vessels? A. Yes, sir, engaged a pilot and six men.

Q. When did you engage the pilot? A. I think about the second day. The day after the mate had left.

Q. What was his name. A. Captain Roberts.

Q. He is the man alluded to in the previous testimony? A. Yes, sir.

Q. Engaged as a pilot to act on what occasion? A. In case of a strong gale of wind he could take her down inside the reefs.

Q. In what way? A. With the sails, with the assistance of his own schooner, and he could have gotten in among the reefs and gotten the assistance of other schooners.

Q. There are channels, then, through these reefs? A. Yes, sir.

Q. And your object in engaging the pilot was, in case you parted your anchors, to work her in through these channels and to get on the lee of the reefs? A. Yes, sir.

Q. So much for the pilot. Did you engage any other ves-vessels to go for assistance? A. Yes, sir, engaged two schooners.

Q. When did you engage them? A. I think it was on the 18th.

Q. The log says the 17th? A. The 17th, then. I sent one to Nassau, and the other to Jacksonville.

Q. Sending advices of your condition, and asking assistance? A. Yes, sir.

Q. How did the vessel ride at her anchor during the time she was there? A. Very easy.

Q. Did you notice any straining, at any time? A. No, sir.

Q. The second officer has stated, in his examination, that the entries made, as to the straining of the ship on her cables, was made at a time when he was off duty, and made at your instigation? A. Well, the mistake is made at my instigation. We keep a scrap log, and everything is written down in pencil. What I wrote was "springing." You know at that depth of water she would spring backwards and forwards on her cables.

Q. And in writing up the entries he made the mistake of "straining" instead of "springing?" A. Yes, sir.

Q. You never noticed any straining at the cables, at all? A. None, at all.

Q. If there had been any straining, what would have been the evidence of it, on board the vessel? A. Cracking the hawse pipes and breaking the windlass.

Q. Have you examined the ship, in respect to these things, and have you seen evidences of these things? A. The windlass was strained in dragging the anchor out from the coral.

Q. Well, speaking of the coral, what kind of bottom did your anchor take in? A. Coral bottom.

Q. What is the character of the coral bottom? A. The first strata of it is almost mud, it is as soft as mud; a greenish mud; and after that once gets out of the water it gets hard, but if left it will accumulate, and as it gets a strata over it it hardens underneath.

Q. So he might be mistaken in saying it was a soft anchorage? A. Yes, sir, there is no soft anchorage around there. It is all coral.

Q. You say there was difficulty in getting the anchor up? A. Yes, sir.

Q. What did that show, it respect to how it held? A. It would never come out without the best of appliances to drag it out.

Q. So it took a good hold? A. Yes, sir.

Examined by MR. MYNDERSE:

Q. You say you had one anchor out, and that is a patent anchor? A. Yes, sir.

Q. What do you mean by that? A. One of those grip —.

Q. How does it compare with the old fashioned, in taking hold? A. The old ones haven't a chance with it.

Q. That is carried outboard all the time, so it can be dropped? A. Yes, sir.

Q. How about the starboard anchor? A. Just the same.

Q. That had been taken on deck, had it? A. We had taken it in when we first saw the Prudentia, to get the chains ready, and kept it in, but it had been over four or five days before we arrived at the anchorage.

Q. It had been taken up on deck? A. Yes, sir, when we saw the Prudentia; to tow with the end of the chain.

Q. But when you came to anchorage, where was it? A. It was put over before we came to anchorage.

Q. So, while you were lying at anchorage, it could be put out in—? A. A second.

Q. These anchors can be put out very rapidly? A. Instantaneously.

Q. What was the character of the chain—a plain link or a stud-link? A. Stud-link.

Q. And they were about how long? A. Nine inches.

Q. And how wide? A. Six inches.

Q. With a stud across the centre? A. Yes, sir. You had better say five inches across.

Q. And a stud across the centre of each link? A. Yes, sir.

Q. Do you know the size of the material that formed the link? A. I don't know it now, sir. I should think it was about an inch and three-quarters.

Q. That is a heavy cable? A. A heavy cable for the size of the ship.

Q. And the starboard cable was the same size? A. Yes, sir.

Q. And, beside the cables on the port and starboard anchor, what other mooring appliances did you have? A. Four other anchors. We had about 150 fathoms of chain of our own—that is, exclusive of those attached to the anchors at the bow, and then we had this chain for the cargo, which we would have used rather than let the ship go ashore.

Q. What wires did you have? A. Two, sir; one a three-and-a-half inch steel hawser and the other about three inch.

Q. They could have been used, of course? A. Yes, sir.

Q. Was there, at any period, any occasion, in your mind, for dropping any other anchor than the port anchor? A. I would have dropped it if there had been.

Q. You didn't see any occasion. You had barometers, of course? A. Yes, sir.

Q. And watched the weather in that way? A. Yes, sir.

Q. And you say Captain Roberts was the local pilot? A. Yes, sir.

Q. A trustworthy man? A. Yes, sir.

Q. There has been testimony to the effect that you kept a watch, on deck, at night, to guard your cable. Why was that, and at whose suggestion? A. To keep a careful lookout against all accidents, sir, so as to be fully covered against everything.

Q. The engineer has testified he heard some man say, "You will be ashore by tomorrow morning?" A. I heard that, myself, but I think it was more of a joke. It was from one of these small schooners going past. I suppose he wanted to put a crowd of men aboard to take care of her himself. I think it was jealousy against Captain Roberts.

Q. He was aboard your vessel? A. The whole time she was there.

Q. If occasion had required, what could you have done to move her from her anchorage? A. Worked her down to the other side of the reefs.

Q. And put her in there? A. Yes, sir.

Q. Was there any anchorage in there? A. Splendid.

Q. That could have been done in what way? A. Sails, or dragged in, by schooners.

Q. It was not as convenient a place to get out of? A. No, sir.

Q. That's the reason you stayed outside? A. Yes, sir.

Q. What time did the Dauntless come along? A. About 12.30.

Q. And the Captain came aboard? A. Yes, sir.

Q. Who came with him? A. A man he has got with him as navigator. The Captain is no navigator, and he brought a man, specially, with him.

Q. What did he do when he came aboard? A. Went down to the cabin.

Q. What did you do then? A. I asked him what he would tow the ship to Vera Cruz for, but he said he couldn't go there at any price; said he had no papers, for one thing, and that if he went his ship would be confiscated. I asked where he would tow us, and he said Nassau. I knew there was no way to dock her at Nassau, and he had no coals to take her anywhere else, and I arranged to tow her to Brunswick, so he could get coals, and after that to Newport News.

Q. Might you not have coaled him out of your own bunkers? A. Yes, sir; I offered to.

Q. What objection was made to that? A. Didn't make them, sir, except he wouldn't have them. I suppose he thought I would charge him for them.

Q. Just state, more in detail, what your conversation was? A. That's as near as I can remember. I asked what he would tow the ship to Newport News for, and he said wherever he towed her we had better not make any arrangement; it had better be left to the owners, to be settled by arbitration. He wouldn't make any bargain, at all.

Q. Did he say anything as to how he ascertained you were there, or anything about your mate, or boat's crew? A. Yes, he said he had seen in a Savannah paper that the boat had

arrived in Savannah, and on the strength of that he came out. He reported to me that the boat and crew were all right.

Q. Did he tell you that the owners of the Clandeboye had engaged a tug to come for you? A. No, sir.

Q. Did he say anything more, respecting the mate and his crew, beyond the fact that the papers said they had arrived? A. That was all, sir.

Q. He gave you no information that the owners were seeking assistance to come for you? A. No, sir.

Q. Why did you accept his services? Didn't you suppose the mate would send someone? A. I knew he would, but in the meantime the ship was lying there eating her head off.

Q. Didn't you think it possible that some other tug might come along in the course of a day or two?

(Question objected to.)

A. I expected them to come from all quarters, but it was a sort of first come first served.

Q. What would be the effect after one had come?

(Question objected to.)

A. I expect, after we had gone, the place was flooded with tugs.

Q. Do you think it possible other tugs would have come, after it was known that the Dauntless had the start by a day or two?

(Question objected to.)

A. After it was known that she had two days' start, it was not likely.

Q. You thought it was best to take what was there? A. Yes.

Q. What did you think as to the probability of the mate's sending a tug, in case he knew the Dauntless had gone out?

(Question objected to.)

A. I don't think it likely he would have sent one, sir.

Q. The Dauntless came alongside on the 19th? A. Yes, sir.

Q. If you had known, at that time, that the owners had

Q. The bulk of your cargo was patent fuel? A. Yes, sir.

Q. Describe that? A. It is blocks, about ten inches by seven by eight—almost a cube.

Q. And in regular form, with smooth surfaces? A. Just like bricks.

Q. Made up of a composition of coals dust? A. And tar; pressed by hydraulic power.

Q. How have you handled this cargo in Newport News? A. Passed it by hand, one brick after another.

Q. Why have you done that? A. To save breakage.

Q. It is brittle stuff, is it? A. Yes, sir.

Q. Have you been able to save breakage, entirely, or not? A. Well, pretty near, sir. We handle it as carefully as we possibly can. I wouldn't like to say there is no breakage—a very little, if any.

Q. How long did it take to discharge your cargo at Newport News? A. About ten or twelve days.

Q. How long did it take to restow it? A. Six or seven, I should think.

Q. That has resulted in nearly twenty days' detention of the vessel, then? A. Yes, sir.

Q. Do you know the demurrage value of a vessel the size of the Clandeboye? A. Yes, sir, about.

Q. How much? A. I should think about forty-five pounds a day.

Q. That is when she has a full crew? A. Same as she has now, sir.

(All of these questions, in regard to the expenses of the ship, are objected to, as immaterial.)

Q. In my question I may have referred only to the conversation you had with Captain Lomm, of the Dauntless. I will ask if anyone else on board the Dauntless gave you any information that your owners or agents had employed tugs to come off for you? A. No, sir.

Q. You had no such information? A. No, sir.

Q. How long have you followed the sea? A. twenty-two years.

Q. The managing owners of the steamer are who? A. Carlisle & Company.

Q. Of where? A. London, sir.

CROSS EXAMINATION.

By MR. ROBERT HUGHES:

Q. Is your handwriting on any of these papers? A. No, sir, not on the log.

Q. On any papers in the room? I would like to see a specimen of it. I am going to ask you to write, in your own handwriting, two or three sentences, at my dictation. (The witness does so, and counsel continues). I will now ask you whether the handwriting on the exhibit herewith filed, marked Exhibit, 4, is yours? A. Yes, that's mine.

Q. Now, with reference to the Prudentia, first. As I understand, the reason why you refused to let him take you in tow, or he refused to take you in tow, whichever it was, was that he wanted you to sign a paper stating that your ship was in a dangerous position? A. A *most* dangerous position.

Q. And you declined to sign that. You thought when he refused, however, that he would still take you in town? A. Yes, sir.

Q. You felt mortified when he didn't take you in tow? A. Rather.

Q. If you were not in a dangerous position, however, there was no occasion for him to take you in tow, as far as the saving of life was concerned? A. No, sir; only in us saving time.

Q. Did he offer to take your crew off for you, if you wished it? A. The sea was as calm as this floor—what did he want to take the crew off for?

Q. Nothing was said about the crew leaving? A. Certainly not.

Q. Was anything said, between you and him, about what he would charge for the towage? A. He wouldn't make an offer, at all.

Q. And you wouldn't? A. I would have made an offer if I thought he would accept it. He was a very old man, and we couldn't come to terms at all.

Q. What kind of a steamer was it? A. A little tramp.

Q. Didn't have any passengers aboard? A. No.

Q. Did you get into communication with any other steamer?

A. No, that was the first one—that was the only one, except the Dauntless.

Q. The only one that came close enough to you to have any speech with? A. Yes, sir.

Q. When you first broke down, didn't you hoist the usual signal, denoting that the ship was not under command? A. Yes, sir.

Q. Those signals were there all the time? A. Yes, sir.

Q. What signal is that? A. Three cast-iron circles.

Q. What is the regular code signal for a ship in distress? A. Regular flag signal; the top one a square flag.

Q. This boat of yours, as I understand, left on the morning of the 10th? A. Yes, sir.

Q. How long did you estimate it would take him to reach port, in case he didn't fall in with a steamer on the way? A. About three days.

Q. So, that by the time the time the Dauntless came, you supposed your boat had gotten into port, and had time to enter into negotiations with tugs or other vessels, didn't you? A. Yes.

Q. And you sent him there for that purpose? A. Yes; I told him first to try to get hold of a tramp steamer, in the Gulf Stream, and only in case of not meeting them to go to Savannah.

Q. When you heard your boat had arrived in Savannah, didn't you naturally suppose, considering what you had sent him for, that he had gone to work at once to make the proper arrangements? A. I supposed so, but at the same time, when this boat came, I took the first. I knew it would be made public property, and I knew, if the mate heard that this boat had left for the reefs, he would not send any, and there would be four or five days lost, waiting, before I communicated with him again.

Q. Do you know whether the men on this Dauntless knew anything about the negotiations with the Morse, or not? A. I didn't know they knew anything about the Morse; and I didn't know anything about the Morse until I met him off Cape Henry.

Q. So, you don't mean to imply that you have any feeling against them for not mentioning it? A. Certainly not; I did

not, and I will say that I don't know anything about them. I have no feelings against them.

Q. You don't think they deceived you by coming out and taking your ship in tow? A. You couldn't call it much else but deceiving.

Q. You call it deceit for a boat to come out and take you in tow nine days after you sent out a boat, and having no reason to suppose he knew—? A. Not if he didn't know.

Q. You feel he has deceived you? A. I have no reason to feel he did.

Q. Then you don't mean to say he did? A. No.

Q. You say these squalls, that came up while you were at anchor, lasted about an hour, each of them? A. Yes, sir.

Q. Well, did this breeze, or squall, or gale, or storm, or whatever you please to call it, the day after the Dauntless took you in tow, last only an hour? A. No, on the Sunday it blew pretty stiff for about three or four hours.

Q. Then it lasted longer than any of these others? A. Well, it gradually freshened, and blew strong for an hour, or an hour and a half, and gradually worked down. The force of the breeze lasted about an hour. We had a steady, fresh breeze about five hours, altogether.

Q. Didn't you say to the Captain of the Dauntless that you would not have liked to have had that squall of Sunday to come up while you were at anchor? A. No, sir.

Q. Did you consider your anchorage off Stranger Cay a safe anchorage? A. It was a very good anchorage. It was like all road-steads—better than some, because it had the reefs to get under the lee of.

Q. Suppose the wind had been anywhere from north-west to south-east, would you consider it a good anchorage? A. Not if it was blowing hard. I would have gotten her in the reefs.

Q. Could you work your ship with the sails? A. To a certain extent, and with these fishing schooners there would have been no difficulty in getting inside the reefs.

Q. What masts does she carry? A. Two.

Q. What sail does she carry? A. Five.

Q. What did you say was the length of your ship? A. Two hundred and eighty-five feet,

Q. And you think that your ship was manageable, with those five sails, in that condition? A. She would have been, for that purpose, to put her inside those reefs.

Q. Isn't that very lumpy and irregular along there? A. We had a pilot on board for the purpose, sir.

Q. So you didn't consider you were in any danger while you were lying there? A. I wouldn't say I wasn't in any danger. She was as safe as in the greater number of road-steads.

Q. Were you enabled, while you were drifting, before you came to anchor, to make any regular course? A. Yes, certain days, sir. One day we went about forty miles on the right course, another about thirty, and then we got a counter-current and came right back, over again.

Q. Suppose you had a good strong breeze, one way, with the current the other, which would your ship have obeyed, the wind, or the current? A. It would depend on the way the wind had been blowing, to affect the current; the longer the breeze had been blowing the more it would affect the current. A breeze just starting up, I should say the current would counteract the effect of the wind.

Q. What was the object of putting the sea anchor out? A. Getting a greater depth———

Q. Did it have the effect of holding the ship? Didn't that have the effect of putting her head to the current? A. It did that.

Q. In reference to the log. Was that written up under your supervision? A. The scrap log was kept under my supervision.

Q. Don't you ever read over the main log after it is written up? A. Just about once a week. I don't read it daily.

Q. Then you would read it over about once a week? A. Yes, sir.

Q. Had you read it over as far as it was written up while lying there? A. Yes, sir.

Q. Did you read it over while you were at Newport News, such parts as you had not read over before, and had been written up in the meanwhile? A. I read the log, as I said, at times. I couldn't tell. I believe I have read it since I have been in Newport News.

Q. So you make it your business to run over the log, to see if it is written up right, or not? A. Yes.

Q. Did you have a feeling that it was necessary to keep a watch on these Bahama men that were around your ship? A. I always take every precaution, and no doubt even take precautions that are not necessary.

Q. Isn't it a well-known fact that the men of these islands down there require watching when a ship is in distress? A. Yes, sir, as far as I know, it is.

Q. Bahama wreckers are pretty well known to the maritime world, aren't they? A. I believe they are.

Q. So you wouldn't feel as safe as you would have felt if you had been anchored in Hampton Roads? A. No, but I felt safe enough, though.

Q. You felt able to take care of yourself, but felt that it was necessary to watch in order to take care of yourself? A. That's it.

Q. Had the crew made any preparations for leaving the ship, in case of necessity? A. I believe the greater part of them packed up their clothes, sir. That I can only say from hearsay, because I didn't see them.

RE-DIRECT EXAMINATION.

By Mr. Mynderse:

Q. It is not a very elaborate matter for a seaman to pack his clothes? A. It is not a very lengthy matter, sir.

By Mr. Robert Hughes:

Q. I believe the Bahama wreckers pack theirs by putting them on their back? A. I don't believe they are half as bad as they are painted. Some of the finest looking men I ever saw down there.

By Mr. Mynderse:

Q. You were asked if you thought that the Dauntless deceived you. Now suppose the Dauntless did, in fact, know— A. Then it was deception, sir.

Q. Did, in fact, know your owners had engaged a tug to come out for you, then what would you call it? A. It was deception.

Q. But you have no personal knowledge, of course, as to what they did know. A. No.

Q. And they gave you no information as to what they knew? A. No.

Q. What is meant by a steamer "straining" at a cable? A. Straining at a cable would mean almost dragging the bows out of the ship, straining the hawse pipes.

Q. Nothing of that kind was done? A. No, sir.

Q. And if she was straining it didn't change the anchor? A. No, sir.

Q. Didn't change your position, at all? A. No, sir.

Q. And did'nt it come up perfect and uninjured? A. Yes, sir.

Q. No studs shaken out? A. No, sir; not one.

Q. And so, if there was any straining it was not sufficient to disturb your anchor? A. No, sir.

A. And, in fact, did it hurt your hawse-pipes? A. No, sir.

Q. What experience had the second officer had in keeping a log? A. This was his first experience as second mate. He had never been mate and never had a log to keep.

And further this deponent saith not.

Signature of witness waived.

CAPTAIN JOHN MILBANK, being duly sworn, desposed as follows:

Examined by MR. MYNDERSE:

Q. You live in London, England? A. Yes, sir.

Q. What is your occupation? A. Marine surveyor and salvage officer.

Q. In connection with Lloyds? A. Yes, sir, and all the large underwriting companies.

Q. Have you had occasion to visit the steamer Clandeboye since she has been in Newport News? A. Yes; specially instructed to look after her.

Q. On her arrival in Newport News, what became necessary, in regard to her cargo? A. I didn't like to put her in

dock with such a great weight, for fear of straining her, and they had to take out 1,500 tons.

Q. And what is the charge for that?

(Question objected to.)

A. So far as we know, about $2,000. That does not include the bill for Custom House watching and other watching.

(By MR. MYNDERSE: I do not offer this proof with any view of affecting the stipulated values of the cargo for the consideration of the Court, but merely as indicating the expense incident to coming to Newport News instead of going to port of destination, at Vera Cruz. To which the counsel for the libellant replies that this is immaterial, so far as this case is concerned, and, therefore, these questions are objected to.)

Q. What does that $2,000 include—what service? A. Taking out of the cargo, by hand, with a stipulation that it should not be touched by winch, or any violent means, carefully taken, by railway wagon, to store, placed in store, and brought back, by the same means; it being necessary, not only for the ship's safety, to take the cargo out, but also to expose the tunnel, as they couldn't get the shaft in without doing so.

Q. And the character of the cargo required a careful handling? A. Yes, sir. If they didn't handle it just like bricks its value, at Vera Cruz, was gone.

Q. Have you seen the cable? A. Oh, yes, sir, I ordered it out of the locker, myself, when I heard the allegation that it was injured.

Q. Was it extended its full length? A. I have seen it all, from the anchor right to the end.

Q. What was its condition? A. It was passed through my eyes, and I had the measuring calipers, and measured the links, and it measured 1 11-16, throughout. The links are not strained, and the studs are not missing. It shows a little wear, but with a ship running as long as this ship, it would show nothing in one part to call attention from any other part.

Q. What do you assume to be the original size? A. We know it was 1 12-16. It has worn 1-16 throughout.

Q. By it's five years' use? A. Yes, sir.

Q. Did you examine it, with care, to see if there were any weak links, or links chafed more than another? A. Yes; looked particularly for that.

Q. What did you find, in that regard? A. Couldn't find any —couldn't find anything in the anchor, or chain, calling for remark. I tried to find it.

Q. How is the windlass, which is engaged with it? A. The windlass was reported to me strained when she arrived. I went to look at it. There was no sign of strain, but as they said that heaving up the anchor strained it, I opened it. The pulley (?) chains, that carry the messenger, were stripped. An examination of the winch shows it is uninjured, but the pulley (?) chains, that carried the winch, are destroyed, and will have to be renewed.

Q. And those are the wheels that the strain came on in lifting the anchor? A. Yes, sir.

Q. Did those wheels carry any strain while riding at anchor? A. No, sir; they did not come into play.

Q. They only come into play when lifting the anchor? A. Yes, sir; that's all.

Q. Did you notice any injury to the hawse pipes? A. No; there is none.

CROSS EXAMINATION.

By Mr. Robert Hughes:

Q. What is your connection with this case? A. Only as representing the underwriters, in England, and perhaps, partially, the ship-owner, who has asked my good offices to assist the captain in making the contracts for her repair. Nothing more than that.

Q. So that, in the management of the case, heretofore, you and the Captain have been in constant conference? A. We have not had much conference, if you mean the local management of the case, but in the management of the ship's affairs, yes; I hold myself responsible for them.

Q. When Mr. duBignon, the owner of the tug, was here, who did the most of the talking with him, you or the Captain? A. I should think myself, almost me entirely, when I made the offer of settlement.

Q. Of course, with the Captain's concurrence? A. Yes, sir; he stood by my side. I did the talking.

Q. At that time, without asking you about any conversation, wasn't it pretty well understood between you and Mr. duBignon that the matter of arbitration would be set aside? A. I think I gave Mr. duBignon to understand that we were not parties, as far as I could see, to arbitration; that, from what I understood from the Captain, the owners of the tug and the owners of the steamer were to settle this between themselves, but the captain could not produce any documentary evidence. The Captain of the Dauntless and myself talked in the cabin.

Q. So you didn't call for an arbitration? A. No.

RE-DIRECT EXAMINATION.

By MR. MYNDERSE:

Q. At the time you held your conversation with the Captain and Mr. duBignon, were you aware that the Dauntless had been informed, prior to her leaving Brunswick, that the owners of the Clandeboye had engaged a tug to go to the relief of the steamer? A. I was ignorant of all that.

Q. And did they let you know they had had that information? A. Oh! no.

Q. You had nothing to do with the efforts that were made by Mr. Minis to get tugs? A. I didn't know of them.

Q. You were looking after another vessel, at Newport News? A. Oh! yes, sir—upon my word, I forget what duty I was about, but nothing about this; I think the Waterloo.

Q. And the Oxford, at Newport News? She is undergoing extensive repairs? A. Yes, sir.

And further this deponent saith not.

Signature of witness waived.

ADJOURNED.

ENGINEER'S LOG—S. S. CLANDEBOYE.

"EXHIBIT 1."

April 22nd, 1894.

At 12.40, p. m., the engines started to race very heavily, and were immediately stopped, when it was discovered that the tail-end-shaft was broken. The engines were turned, both by steam and the turning-gear, for the purpose of ascertaining where the shaft was broken. The shaft revolved as far as the stern-gland, but propeller and end of tail-end-shaft did not, so I came to the conclusion that the shaft was broken in that part, which was in the stern-tube. It was possible, from the stern of the ship, to see the cross cotter, behind the propeller, and, knowing this fact, I knew that it was impossible for the shaft to be revolving inside the propeller, since there was a groove in the back of it into which the cotter partly fitted. The engines were examined, after they were stopped, and it was discovered that the main bearings, guides and bottom-ends, were above the normal temperature, the cause of which was the heavy race the engines gave; since previously everything was running splendidly and gave no trouble whatever.

As soon as the engines stopped the main boiler commenced to blow off; all the fires were immediately drawn, and the boiler pumped up, slowly, from the sea.

The ship made no water after the shaft was broken. The stern-tube was examined, in the after peak, and it was found all right. The tunnel-door was put down.

The engines having been overhauled and examined, it has been found that the metal had started to run in No. 5 main bearing. The H. P. top- and bottom-end brasses broken, and the metal in the other bottom-ends and in bearing brasses more or less loose.

The intermediate slide-valve scored badly and the H. P. valve spindle defective in the shoulder, which holds the washer, upon which the slide-valve rests. The steam-gauges are also out of order, having been strained badly by the steam when the engines were instantly stopped.

(Signed) WM. HY. ROBSON,
Chief Engineer.

April 23rd, 1894.

Engineers overhauling main engines, &c.

Firemen assisting engineers cleaning engine-room bilges, etc.

Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after main boiler. Weather fine and calm.

Distance drifted, 40 miles.

April 24th, 1894.

Engineers overhauling main engine, etc.

Fireman assisting engineers cleaning bilges and tunnel.

Donkey-man working-from 6.0 p. m. to 6.0 a. m., looking after main boiler. Weather calm and fine.

Distance drifted, 32 miles.

WM. HY. ROBSON,
Chief Engineer.

April 25th, 1894.

Engineers overhauling main engines, etc.

Firemen assisting engineers and cleaning the tunnel.

Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after donkey boiler, which was set away at 6.0 p. m., and the main boiler fires allowed to die out. Weather fine and calm.

No observation.

April 26th, 1894.

Engineers overhauling main engines, etc.

Firemen assisting engineers, scraping boiler tubes, etc.

Donkey-man working from 6.0 p. m. to 6.0 a. m., condensing fresh water for deck, etc., (12 hrs. overtime.) Weather fine and calm.

Distance drifted, 39 miles.

April 27th, 1894.

Engineers overhauling main engines, etc.

Firemen assisting engineers and cleaning boiler tubes, etc.

Donkey-man working from 6 p. m. to 6.0 a. m., looking after donkey boiler. Condensing for deck from 8.0 a. m. to 6.0 p. m. Weather fine and calm.

Distance drffted, 12½ miles.

April 28th, 1894.

Engineers overhauling main engines, etc.

Firemen assisting engineers, cleaning up the stokehole and getting the ashes up.

Donkey-man working-from 1.0 p. m. to 6.0 a. m., looking after donkey boiler, etc. (5 hrs. overtime.) Weather fine and calm.

Distance drifted, 5 miles.

Saturday, 29-4-'94.

Donkey boiler on from 12.0 midnight to 12.0 a. m. Monday morning. (Donkey-man 12 hrs. overtime.) Weather fine and calm.

Distance drifted, 14 miles.

Monday, 30-4-'94.

Engineers overhauling the main engines, etc.

Fireman assisting engineers, and chipping furnaces of main boiler.

Donkey-man working from 6.0 p. m., to 6.0 a. m., looking after the donkey boiler, etc. Strong wind and heavy sea on port beam; ship rolling heavily. Distance drifted, 34 miles.

Tuesday, 1-5-'94.

Engineers overhauling the main engines, etc.

Firemen assisting engineers and scaling furnaces of main boiler.

Donkey-man working from 6.0 p. m., to 6.0 a. m., looking after the donkey boiler, etc. Strong wind and heavy sea on port beam; ship rolling occasionally. Distance drifted, 22½ miles.

Wednesday, 2-5-'94.

Engineers overhauling the main engines, etc.

Firemen assisting engineers, and scaling the furnaces of the main boiler.

Donkey-man working from 6.0 p. m., to 6.0 a. m., looking after the donkey boiler, etc. Fresh wind, with heavy swell, on port beam. Distance drifted, 2 miles.

Thursday, 3-5-'94.

Engineers overhauling the main engines, etc.

Firemen assisting engineers, and scaling the furnaces of the main boiler.

Donkey-man working from 6.0 p. m., to 6.0 a. m., looking after the donkey boiler, etc. Light wind and sea on port beam. Distance drifted, 23 miles.

Friday, 4-5-'94.

Engineers overhauling the main engines, etc.

Fireman assisting the engineers, and scaling the combustion chamber tops of the main boilers.

Donkey-man working from 6.0 p. m., to 6.0 a. m., looking after the donkey boiler, etc. Light wind and sea on port beam. Distance drifted, 28 miles.

Saturday, 5-5-'94.

Engineers overhauling the main engines, etc.

Firemen assisting the engineers, scaling the longitudinal stays of the main boiler.

Donkey-man working from 1.0 p. m., to 12.0 midnight, looking after donkey boiler (overtime, five hours.) Light wind and sea on port beam. Distance drifted, 16 miles.

Sunday, 6-5-'94

Tanks Nos. 2 and 5 runned up.

Donkey-man working from 12.0 a. m., to 12.0 midnight, looking after the donkey boiler (overtime, twelve hours.) Light wind and sea on port beam. Distance drifted, 22 miles.

Monday, 7-5-'94.

Engineers overhauling the main engines, etc.

Fireman assisting the engineers, cleaning the top platform of the engine room and chipping the longitudinal stays of the main boiler, etc.

Donkey-man working from 6.0 p. m., to 6.0 a. m., looking after donkey boiler, etc. Light wind and sea on the port beam.

No. 1 tank runned up, and No. 5 pumped out.

Tuesday, 8-5-'94.

Engineers overhauling the main engines, etc.

Firemen assisting the engineers, etc.

Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after the donkey boiler. No. 5 tank runned up.

Light wind and sea on port beam.

Wednesday, 9-5-'94.

Engineers overhauling main engines, etc.

Firemen assisting the engineers, scouring the engines, etc.

Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after the donkey boiler, etc. All bulkhead water-tight doors put down. Eighteen fire-bars taken in the life-boat, for ballast. Ship anchored off the Bahama Islands at 5:30 p. m.

Thursday, 10-5-'94.

Engineers overhauling the main engines, etc.

Firemen assisting the engineers, and chipping the longitudinal stays of the main boiler.

Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after the donkey boiler, etc.

Friday, 11-5-'94.

Engineers overhauling the main engines, etc.
Firemen assisting the engineers, etc.
Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after the donkey boiler, etc.

Saturday, 12-5-'94.

Engineers overhauling the main engines, etc.
Firemen assisting the engineers, and cleaning up.
Donkey-man working from 1.0 p. m. to 6.0 a. m., looking after donkey boiler, etc. (overtime, five hours.)

Sunday, 13-5-'94.

Donkey-man working from 12.0 a. m. to 12.0 midnight, looking after the donkey boiler. (overtime, twelve hours.)

Monday, 14-5-'94.

Engineers overhauling the main engines, etc.
Firemen assisting the engineers, and cementing the main boiler.
Donkey-man working from 6.0 a. m. to 6.0 p. m., looking after the donkey boiler, etc.

Tuesday, 15-5-'94.

Engineers overhauling the main engines, etc.
Firemen assisting the engineers, and scaling the engine room bulkhead.
Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after the donkey boiler, etc.

Wednesday, 16-5-'94.

Engineers overhauling the main engines, etc.
Firemen assisting the engineers, and scaling the engine room bulkhead.
Donkey-man working from 6.0 a. m. to 6.0 p. m., looking after the donkey boiler, etc.

Thursday, 17-5-'94.

Engineers overhauling thr main engines, etc.
Firemen assisting the engineers, and scaling the engine room bulkhead.
Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after donkey boiler, etc.

Friday, 18-5-'94.

Engineers overhauling the main engines, etc.

Firemen assisting the engineers, and scaling the engine room bulkhead.

Donkey-man working from 6.0 p. m. to 6.0 a, m., looking after the donkey boiler, etc,

Saturday, 19-5-'94.

Engineers overhauling the main engines, etc.

Firemen assisting the engineers, and scaling the engine room bulkhead.

Donkey-man working from 1.0 p. m. to 12.0 midnight, looking after the donkey boiler, etc. (overtime, five hours).

Tanks 1, 2 and 5 pumped out. Ship taken in tow by tug boat at 2.15 p. m.

Sunday, 20-5-'94.

Donkey-man working from 12.0 a. m. to 12.0 midnight,looking after the donkey boiler (overtime, twelve hours). Condensing for deck from 9.0 a. m. to 10.0 p. m. Firemen keeping watch on deck.

Monday, 21-5-'94.

Engineers overhauling main engines, etc.

Firemen keeping watch on deck.

Donkey-man working from 11.0 a. m. to 6.0 p. m., scaling the donkey boiler and getting steam for steering gear (over time seven hours). Donkey boiler opened up and scaled.

Tuesday, 22-5-'94.

Engineers overhauling the main engines, etc.

Firemen keeping watch on deck.

Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after the donkey boiler. Condensing water for deck from 9.0 a. m. to 11.0 p. m. Ship lay at anchor from 10.20 a. m. to 6.45 p. m., waiting for tug boat to bunker.

Wednesday, 23-5-'94.

Engineers overhauling the main engines, etc.

Firemen keeping watch on deck.

Donkey-man working from 6.0 p. m. to 6 a. m., looking after the donkey boiler. Condensing water for deck from 9.0 a. m. to 5.0 p. m.

Thursday, 24-5-'94.

Engineers overhauling the main engines, etc.

Firemen keeping watch on deck.

Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after the donkey boiler. Condensing water for deck from 9.0 a. m. to 5. p. m.

Friday, 25-5-'94.

Engineers overhauling the main engines, etc.

Firemen keeping watch on deck.

Donkey-man working from 6.0 p. m. to 6.0 a. m., looking after the donkey boiler, etc.

Saturday, 26-5-'94.

Engineers overhauling the main engines, etc.

Firemen keeping watch on deck.

Donkey-man working from 1.0 p. m. to 12.0 midnight, looking after the donkey boiler, etc. (overtime, five hours).

Ship anchored in the Chesapeake, off Newport News.

"EXHIBIT 2."

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1	W-S-W	S by E	nil		*Sunday, April 22, 1894.*
2					
3					
4	W-S-W	S by E	nil	30–11	Moderate breeze; clear;
5					sea smooth.
6					
7					
8	W-S-W	S by E	nil	30–15	Light breeze; clear; sea
9					smooth.
10					
11					
12	W-S-W	S by E	nil	30–12	Do. Do.; sea smooth.
1					0:40 p.m.—Engines run
2					round at great speed, mak-
3					ing a terrible noise and
4					causing much vibration,
5					fore and aft. After the ship
6					had stopped could see the
7					propeller was all right and
8					cross cotter in place. Turn-
9					ed engines with handgear,
10					also by steam, on main en-
11					gine. Engines working all
12					right, but propeller did not

move. Put port quarter-boat out, to make a closer inspection of the propeller, but could not see anything wrong, so came to the conclusion that the tail-end of the shaft was broken inside the stern-tube. Set all sail, also hoisted the regulation signal, denoting "ship not under command."

Bearing and Distance, at Noon:—Course, s., 57° w.; Latitude observed, 26°38′n.; Longitude (by chronometer), 74°37′w.

Distance, 196 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1		south	2	30–10	*Monday, April 23, 1894.*
2					
3					
4	w-s-w	south	2	30–10	Light breeze and clear;
5					smooth sea; ship drifting
6					with current, about n-w.
7					
8	n-w by w	south	2	30–12	Do. Do.; sea smooth.
9					
10					
11					
12	n-w by w	south	2	30–12	Do. Do.
1					
2					
3					
4	n-w by w	south	2	30–9	Do. Do.
5					
6					
7					
8	west	s-s-w	2	30–10	Overcast, with thunder
9					and lightning in n-w & s-e.
10		n-w	nil		Heavy rain with heavy
11					thunder and lightning.
12	west		nil	30–10	Light breeze and clear.

Bearing and Distance, at Noon:—Course, n., 70° w.; Latitude observed, 26° 52′ n.; Longitude (by chronometer), 75° 20′ w.

Distance drifted, 40 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1		calm	1		*Tuesday, April 24, 1894.*
2					
3					
4	s-w	calm	1	30–7	Calm and clear; sea
5					smooth.
6					
7					
8	s-w	calm	1	30–7	Calm and clear; sea
9					smooth.
10					
11					
12	s-w	calm	1	30–9	Calm and clear; sea
1					smooth.
2					
3*					
4	n-w	calm	1	30–6	Light air; clear.
5					
6					
7					
8	north	s-e	1	30–5	Light air; clear; sea
9					smooth.
10					
11	n-e	s-e	2	30–6	Set fore trysail.
12	n-e	s-e	2		Moderate breeze; clear.

* Heavy shower of rain, with thunder and lightning.

Bearing and Distance at Noon :—Course, n., 74° w.; Latitude observed, 27° 1′ n.; Longitude (by chronometer), 75° 54′ w.

Distance drifted, 32 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Wednesday, April 25, 1894*
2					
3					
4	e-n-e	s-e	2	30–4	Light breeze and clear;
5					sea smooth.
6					
7					
8	e-s-e	n-n-e	nil	30–5	Wind shifted, with
9					heavy thunder storm and
10					very heavy rain; in all sail.
11					
12	e-s-e	n-n-e	nil	30–9	Heavy thunder storm,
1					with very heavy rain and
2					lightning; sea smooth.
3					
4	n-w	south	nil	30–5	Light breeze and clear.
5					
6					
7					
8	w-n-w	south	nil	30–4	Moderate breeze and
9					overcast, with lightning
10					in the south-west.
11					Heavy thunder storm,
12	s-e	n-e	nil	30–5	with very bright light-

ning and heavy rain.

No observations this day, being overcast throughout.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Thursday, April 26, 1894.*
2					
3					
4	s-s-e	east	nil	30–04	Light breeze and clear,
5					with moderate swell.
6					
7					
8	s-s-e	east	nil	30–08	Do., Do., and moderate
9					sea.
10					
11					
12	s-s-e	east	nil	30–09	Do., Do.
1					
2					
3					
4	s-s-e	east	nil	30–05	Do., Do.
5*					
6					
7					
8	s-s-e	east	nil	30–06	Do.; wind and weather.
9					
10					
11					
12	s-s-e	east	nil	30–06	Do., Do.

* Spoke the American schooner David Grall, of Baltimore, and told him to report us with shaft broken.

Bearing and Distance, at Noon:—Course, n., 19°e.; Latitude observed, 27°38′n.; Longitude (by chronometer), 75°41′w.

Distance drifted, 39 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAYS, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of wind	Sail Set	Barometer	REMARKS, ETC.
1					*Friday, April 27, 1894.*
2					
3					
4	s-e	calm	nil	30–05	Calm and clear; east-swell.
5					
6					
7					
8	s-e	n-e	nil	30–08	Moderate breeze and clear; moderate sea.
9					
10					
11					
12	East	n-e	nil	30–10	Fresh breeze and clear; moderate sea.
1*					
2					
3					
4	s-e	n-e	nil	30–11	Fresh breeze and clear; moderate sea.
5					
6					
7					
8	s-e by s	n-e	nil	30–12	Do. Do.; moderate beam sea.
9					
10					
11					
12	s-e by s	n-e	nil	30–14	Do. Do.

*Hoisted signal to Swedish barque to report us with shaft broken.

Bearing and Distance at Noon:—Course, n., 51°e.; Latitude observed, 27° 46′n.; Longitude (by chronometer), 75°31′w.

Distance drifted, 12½ miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEOBYE," from Cardiff, towards Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of wind	Sail Set	Barometer	REMARKS, ETC.
1					*Saturday, April 28, 1894.*
2					
3					
4	s-e by e	n-e	nil	30–13	Light breeze and clear; moderate sea.
5					
6					
7					
8	s-e by e	n-e	nil	30–18	Moderate breeze and squally; passing showers of rain; moderate sea.
9					
10					
11					
12	s-e by e	n-e	nil	30–20	Moderate breeze and clear.
1					
2					
3					
4	s-e by e	n-e	nil	30–18	Do., Do.
5					
6					
7					
8	s-e by e	n-e	nil	30–19	Do., Do.
9					
10					
11					
12	s-e by e	n-e	nil	30–19	Do., Do.

Bearing and Distance at Noon:—Course, n., Latitude, by account, 27°51′n.; Longitude (by chronometer), 75°32′w.

Distance drifted, 5 miles.

Lookout from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY. T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.
Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Set Sail	Barometer	REMARKS, ETC.
1					*Sunday, April 29, 1894.*
2					
3					
4	s by e	n-e	nil	30–17	Light airs and clear, with
5					moderate sea.
6					
6					
8	s by e	east	nil	30–20	Do., Do.
9					
10					
11					
12	s-e	east	nil	30–19	Do., Do.
1					
2					
3					
4	s-e	east	nil	30–17	Do., Do.
5*					
6					
7					
8	s-e	east	nil	30–18	Light air and clear; sea
9					smooth.
10					
11					
12	s-e	east	nil	30–20	Do., Do.

*Took main trysail and boat spars, and rigged a sea anchor; put it over the bow, passing out about 35 fathoms wire hawser.

Bearing and Distance, at Noon:—Course, n., 10°w.; Latitude observed, 28°5′n.; Longitude (by chronometer), 75°35′w.

Distance drifted, 14 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Monday, April 30, 1894.*
2					
3					
4	s–s–e	n–e	nil	30–16	Light breeze and clear,
5					with moderate swell.
6					
7					
8	s–s–e	n–e	nil	30–17	Do., Do.; sea smooth.
9*					
10					
11					
12	s–s–e	n–e	nil	30–19	Do.; wind and weather.
1					
2					
3					
4	s–s–e	n–e	nil	30–18	Fresh breeze, with heavy
5					rain.
6†					
7					
8	s–e	n–e	1	30–19	
9					
10					
11					
12	s–e	n–e	1	30–20	Wind and sea moderating

*Unshackled starboard chain cable from anchor, taking anchor on deck. Cable all ready for towing with.

†Strong breeze and overcast, with beam sea; ship rolling heavy. Set fore trysail to steady ship and took sea anchor in.

Bearing and Distance at Noon:—Course, n., 71°w.; Latitude observed, 28°16′n.; Longitude (by chronometer), 76° 10′w.

Distance drifted, 34 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1	s–s–e	n–e	1		*Tuesday, May 1, 1894.*
2					
3					
4	s–s–e	n–e	1	30–24	Fresh breeze and clear; beam sea; ship rolling heavy.
5					
6					
7					
8	s–s–e	n–e	1	30–25	Do., Do.
9*					
10					
11					
12	s by e	n–e	1	30–25	Do., Do.
1†					
2					
3					
4	s by e	n–e	1	30–25	Do., Do.
5					
6					
7					
8	s by e	n–e	nil	30–20	Light breeze and clear; moderate sea.
9					
10					
11					
12	s by e	n–e	nil	30–20	Do., Do.

*Bent main trysail on jib stay, to try and pay ship's head off, so as to get her on the other tack. After trying her for about an hour, found it was no use, as she would not answer her helm, falling off two points and coming up again.

†Unbent main trysail and rigged as sea anchor again, and put it over, so as to keep ship's head up to the wind and prevent her from driving to leeward.

Bearing and Distance at Noon:—Course, n., 45°e.; Latitude observed, 28°1′n.; Longitude (by chronometer), 75°51′w.

Distance drifted, 22.6 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1	s-s-e	n-e	2		*Wednesday, May 2, 1894.*
2					
3					
4	s-s-e	n-e	2	30-20	Fresh breeze and clear,
5					with moderate sea.
6					
7					
8	south	n-e	2	30-24	Do., Do.
9					
10					
11					
12	south	n-e	2	30-25	Do., Do.
1					
2					
3					
4	south	n-e	2	30-19	Do., Do.
5					
6					
7					
8	south	n-e	2	30-23	Do., Do.
9					
10					
11					
12	south	n-e	2	30-24	Do., Do.

Bearing and Distance at Noon:—Course, s., 45°e.; Latitude observed, 28°0′n.; Longitude (by chronometer), 75°52′w.

Distance drifted, 2 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attend to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1	s-s-w	east	2		*Thursday, May 3, 1894.*
2					
3					
4*	s-s-w	east	2	30-23	
5					
6					
7					
8†	s-s-w	east	2	30-25	Do., Do.; showery.
9‡					
10					
11					
12§	s by w	e-n-e	2	30-25	Light air and clear; sea smooth.
1					
2					
3					
4	s by w	e-n-e	2	30-24	Do., Do.
5					
6					
7					
8	s by w	e-n-e	2	30-24	Do., Do.
9					
10					
11					
12	s by w	e-n-e	2	30-24	Do., Do.

*Light breeze and clear; with moderate sea. Fore and aft sails set back so as to cause ship to make a westerly course.

†8.20—sighted the ss. Prudentia, and hoisted signal "will you take me in tow."

‡Put port quarter boat out and Captain boarded her, but could not come to any terms, as Captain of the Prudentia wanted Captain to sign a document that the tail-end of the shaft was broken.

§12.30—Proceeded, full speed, on her course, to Havana.

Bearing and Distance, at Noon:—Course, n.,53°w.; Latitude observed, 28°11′n.; Longitude (by chronometer), 76°10′w.

Distance drifted, 23 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1	s by w	e-n-e	2		*Friday, May 4, 1894.*
2					Fore and aft sails set aback
3					so as to make a westerly co.
4	s by w	e-n-e	2	30–20	Light breeze; clear; sea
5					smooth.
6					
7					
8	s by w	e-n-e	2	30–24	Moderate breeze; clear;
9					sea smooth.
10					
11					
12	s by w	e-n-e	2	30–23	Do., Do.; sea smooth.
1					
2					
3					
4	s by w	e-n-e	2	30–19	Do., Do.; sea smooth.
5					
6					
7			1		In main staysail.
8	s by w	e-n-e	1	30–19	Do.; wind and weather;
9					sea smooth.
10					
11					
12	s by w	e-n-e	1	30–19	Do., Do.; sea smooth.

Bearing and Distance, at Noon:—Course, s., 68° w.; Latitude observed, 28° 1′ n.; Longitude (by chronometer), 76° 44′ w.

Distance drifted, 28 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, lookouts, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEOBVE," from Cardiff, towards Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of wind	Sail Set	Barometer	REMARKS, ETC.
1					*Saturday, May 5, 1894.*
2					
3					
4	south	e-n-e	1	30–13	Light breeze and clear;
5					sea smooth.
6					
7					
8	south	east	1	30–15	Do., Do.; sea smooth.
9					
10					
11					
12	south	east	nil	30–15	Do., Do.; in foresail; sea
1					smooth.
2					
3					
4	s by e	east	nil	30–04	Do., Do.; sea smooth.
5					
6					
7					
8	s by e	east	nil	30–13	Do., Do.; sea smooth.
9					
10					
11					
12	s by e	east	nil	30–12	Do., Do.; sea smooth.

Bearing and Distance, at Noon:—Course, s. 28° w.; Latitude observed, 27°47′n.; Longitude (by chronometer), 76°54′w.

Distance drifted, 16 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY. T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Set Sail	Barometer	REMARKS, ETC.
1					*Sunday, May 6, 1894.*
2					
3					
4	south	n-e	nil	30–08	Light breeze and clear;
5					strong s-e swell; ship rol-
6					ling heavy.
6					
8	south	n-e	nil	30–09	Do., Do.
9					
10					
11					
12	south	n-e	nil	30–07	Do., Do.
1*					
2					
3					
4	s-e by s	n-e	nil	30–03	Moderate breeze and pas-
5					sing showers of rain; sky
6					gloomy; strong easterly
7					swell; ship rolling heavy.
8	s-e by s	n-e	nil	30–03	Do., Do.
9		east			
10					
11					
12	south	east	nil	30–04	Do., Do.; clear.

* Found, by observation, that ship was driving towards the shoals; current setting about n-e; filled up No. 2 and 5 ballast tanks, so as the wind would have less effect on the ship and current would set her off shore.

Bearing and Distance, at Noon:—Course, s., 25° w.; Latitude observed, 27°27′n.; Longitude (by chronometer), 77°4′w.

Distance drifted, 22 miles.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Monday, May 7, 1894.*
2					
3					
4	south	calm	nil	30–03	Calm, with passing showers of rain; easterly swell.
5					
6*					
7					
8	s by e	e-n-e	nil	30–06	Light breeze and clear, with moderate sea.
9					
10					
11					
12	s by e	e-n-e	nil	30–07	Do., Do.
1					
2					
3					
4	s by e	e-n-e	nil	30–04	Do., Do.
5					
6†					
7					
8	s by e	east	nil	30–04	Do., Do.
9					
10					
11					
12	s by w	east	nil	30–04	Weather, Do.

* At daylight found wire hawser was broken, loosing sea anchor and all gear attached to it, viz.: main trysail, one coil three-inch manilla, one coil fifteen-pound rolling and boat spars.

† Pumped out No. 5 tank, and filled No. 1 to try and get ship on the other tack, but did not make any difference.

Bearing and Distance at Noon:—Course, s., 62°w.; Latitude observed, 29°20′w.; Longitude (by chronometer), 77° 18′w.

Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Thursday, May 8, 1894.*
2					
3					
4	s by w	east	nil	30–00	Moderate breeze; clear;
5					s-s-e swell; sky cloudy and
6					overcast; passing showers
7					of rain.
8	south	east	nil	30–04	Do., Do.
9					
10					
11					
12	south	east	nil	30–04	Do., Do.; moderate sea.
1*					
2					
3					
4	south	east	nil	30–00	Do., Do.
5					
6					
7					
8	south	east	nil	30–00	Do., Do.
9†					
10					
11					
12	south	east	nil	30–02	Do., Do.

* Filled up No. 5 tank again, to keep ship from driving so fast to leeward.

† 9:11—Hove out port anchor to fifteen fathom-shackle, at pipe, so that the anchor will take the ground if ship drives into shallow water.

Bearing and Distance, at Noon:—Course, s., 84°.w; Latitude observed, 27°18′n.; Longitude (by chronometer), 77°46′w.

Distance drifted, 25 miles.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAYS, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Wednesday, May 9, 1894.*
2					
3					
4	south	east	nil	30–1	Light breeze and clear;
5*					sea moderate.
6					
7					
8	south	east	nil	30–0	Do.; moderate sea.
9					Driving toward the land;
10					set all fore and aft sails, to
11					get ship to safe anchorage.
12	south	east	nil	30–0	Do.; moderate sea.
1					Payed out other 15 fms.
2					chain; total, 30 fms.
3					
4					
5†					
6					
7					
8					Stranger's Cay bearing
9‡					s-e; dist., 3 miles.
10					
11	n-e	n-e	nil	30–0	Do.; ship riding easy.
12					

* Sighted land bearing from s to s-w.

† 5:30—Anchor took ground in thirty fathoms water; gave her twenty fathoms and brought her head up to wind; riding easy; in good holding ground and safe position.

‡ Stored port life boat and made all arrangements for sending same away in the morning for assistance.

Bearing and Distance at Noon:—Course, s-w.; Latitude observed, 27°13′n.; Longitude (by chronometer), 78°3′w.

Distance drifted, 14 miles.

Lights, look-outs, tanks and pumps carefully attended to.

HARRY T. HAY, MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of wind	Sail Set	Barometer	REMARKS, ETC.
1	n-e by e	n-e	nil	30–05	*Thursday, May 10, 1894.*
2					Weather fine and light
3					breeze; ship riding easy.
4					
5*					
6					
7					
8	n-e by e	n-e	nil	30–08	Weather Do.
9					
10					
11					
12	n-e by e	n-e	nil	30–10	Do., Do.
1					
2					
3					
4	n-e by e	n-e	nil	30–13	Do., Do.
5					
6					
7					
8	n-e by e	n-e	nil	30–15	Do., Do.; swell from n-e,
9					with threatening weather.
10					
11					
12	n-e by e	n-e	nil	30–15	Do., Do.

* Port lifeboat left ship, chief officer in charge, to search for steamers.

Bearing and Distance. at Noon:—Course, south; Latitude observed, 27°10′n.; Longitude (by chronometer), 78°3′w.

Distance drifted, 3 miles.

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Friday, May 11, 1894.*
2					
3					
4	var	var	nil	30–13	Weather squally; passing
5					showers of rain; lightning
6					to n-e; engaged a pilot so
7					that should ship start her
8					anchor she may be assist-
9					ed, with sails, through the
10					numerous reefs and moved
11					to the leeward of them.
12	n-e	east	nil	30–15	Light breeze; sea smooth.
1					
2					
3					
4	n-e	east	nil	30–17	Do.; nothing heard of
5					boat.
6					
7					
8	n–e	east	nil		Do., Do.
9					
10					
11					
12	n–e	east	nil		Do., Do.

Boat not yet returned.

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEOBYE," from Cardiff, towards Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of wind	Sail Set	Barometer	REMARKS, ETC.
1					*Saturday, May 12, 1894.*
2					
3					
4	n-e	east	nil	30–20	Weather squally, with
5					heavy rain showers; sea
6					moderate; ship straining
7					at her cables.
8	n-e	east	nil	30–20	Do., Do.
9					
10					
11					
12	n-e	east	nil	30–20	Do., Do.
1					
2					
3					
4	n–e	east	nil	30–19	Fresh breeze, and strong
5					easterly swell.
6					
7					
8	n–e	east	nil	30–19	Do., Do.; boat not yet re-
9					turned.
10					
11					
12	n–e	east	nil	30–21	Light breeze; sea mod.

Boat not heard of.

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Set Sail	Barometer	REMARKS, ETC.
1					*Sunday, May 13, 1894.*
2					
3					
4	n–e	east	nil	30–20	Light breeze; sea mod.
5					
6					
6					
8	n–e	east	nil	30–19	Light breeze and clear;
9					moderate sea.
10					
11					
12	n–e	east	nil	30–18	Do., Do.
1					
2					
3					
4	n–e	east	nil	30–17	Do., Do.
5					
6					
7					
8	n–e	east	nil	30–15	Weather as above.
9					
10					
11					
12	n–e	east	nil	30–17	Do.; boat not yet return'd

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Monday, May 14, 1894.*
2					
3					
4	n-e	e by n	nil	30 14	Fresh breeze and squally;
5					passing showers of rain;
6					moderate sea.
7					
8	n-e	e by n	nil	30–13	Do., Do.
9					
10					
11					
12	n-e	e by n	nil	30 12	Do.; ship straining at her
1					cables during the day.
2					
3					
4	n-e	e by n	nil	30–11	Weather, Do.
5					
6					
7					
8	n-e to exn	e by s	nil	30–08	Breeze moderating; sea
9					moderate.
10					
11					
12	n-e to exn	e by s	nil	30–09	Light breeze; smooth sea.

Stranger's Cay bearing s by w and s by e.

Boat not yet returned.

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Tuesday, May 15, 1894.*
2					
3					
4	n-e by e	s-e	nil	30–06	Light breeze; moderate
5					sea.
6					
7					
8					Sight taken for chrono-
9					meter; error found to be
10					11′05″ slow of Gwh. T.
11					
12	n-e	east	nil	30–04	Gentle breeze and clear;
1*					sea smooth.
2					
3					
4	n-e	east	nil	30–02	Do., Do.
5					
6					
7					
8	n-e	east	nil	30–00	Do., Do.
9					
10					
11					
12	east	s-s-e	nil	30–00	Light air; gentle easterly swell.

* Deep sea lead kept over the side all the time to ascertain if the ship was driving.

Boat not yet returned.

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Wednesday, May 16, 1894.*
2					
3					
4	s-e	s-s-w	nil	28-98	Light breeze; moderate swell.
5					
6					
7					
8	s-e	s-s-w	nil	29-99	Do., Do.
9					
10					
11					
12*	n-n-e	east	nil	30-00	
1					
2					
3					
4	n-n-e	east	nil	29-98	Do., Do.
5					
6					
7					
8	n-n-e	e-s-e	nil	29-97	Do., Do.
9					
10					
11					
12	s-e	s-s-e	nil	29-98	Light breeze; mod. swell.

* Light airs and calm; strong n-w swell; ship straining heavily at cables; lost deep sea lead and twenty fathoms of line, having chafed on coral bottom.

Boat not yet heard of.

Lights, look-outs, tanks and pumps carefully attend to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Thursday, May 17, 1894.*
2					
3					
4	s by e	s-s-w	nil	29-97	Light breeze and clear;
5					sky cloudy and overcast;
6					sea moderate.
7					
8*	n-w	s-w	nil	29-97	
9					
10					
11					
12	n-w	south	nil	30-00	Weather do.
1					
2					
3					
4	n-w	south	nil	30-00	Light airs and heavy
5					showers of rain.
6					
7					
8	s-e	s-e	nil	30-01	Heavy squall, with rain;
9					ship swung round head to
10					wind; straining at her ca-
11					bles.
12†	s-e	s-e	nil	30-00	

*Light airs and showery; sea smooth; engaged the two schooners Queen and None Such—the former taking letters and cables for assistance to Nassau; the latter to Jacksonville, for the sum of £100, including a pilot and four men on board for nine days, with a schooner attending the whole time.

†Fresh breeze and clear; sea smooth.

Boat not yet returned.

Lights, look-outs and tanks carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Friday, May 18, 1894.*
2					
3					
4	s-e	s-e	nil	29–95	Weather squally; heavy showers of rain; sea smooth.
5					
6					
7					
8	s-e	s-e	nil	29–92	Do., Do.
9					
10					
11					
12	s-e	s-e	nil	29–90	Do., Do.
1					
2					
3					
4	e-s-e	east	nil	29–85	Fresh breeze and clear; sea smooth.
5					
6					
7					
8	e-s-e	east	nil	29–85	Do., Do.
9					
10					
11					
12	east	s-e	nil	29–84	Light breeze and clear; sea smooth.

Boat not heard of.

Lights, lookouts, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Saturday, May 19, 1894.*
2					
3					
4	east	s-w	nil	29-79	Light breeze and clear;
5					sky cloudy; sea smooth.
6					
7					
8	east	s-w	nil	29-78	Do., Do.
9					
10					
11					
12	west	w by n	nil	29-79	Weather Do.
1					
2*					
3					
4	n by w	w by n	nil	29-71	Light breeze and clear;
5					sea smooth.
6†					
7					
8	n-w by n	s-w	nil	29-69	Fresh s-w breeze; flashes
9‡					lightning from same quar-
10					ter; sea smooth; sky over-
11					cast.
12	n-w by n	s-w	4	29-74	Weather and sea Do.

* Hove up anchor and proceeded on a n-w course, towed by the steamer Dauntless, of Brunswick. While heaving up anchor, strained gipsy wheels, same being thereby rendered unfit for further use. Commenced pumping Nos. 1, 2, 4 and 5 tanks out.

† Report brought by the Dauntless, boat having arrived at Savannah.

‡ Set sails to assist ship along.

Lights, look-outs and tanks carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Set Sail	Barometer	REMARKS, ETC.
1					*Sunday, May 20, 1894.*
2*					
3					
4	n-w by n	n-w	nil	29–75	Strong breeze and clear;
5					strong northerly swell.
6					
6					
8	n-w by n	north	nil	29–81	Do., Do.
9					Set trysail and staysail.
10					Took sails in; wind haul-
11					ing back to the n-w.
12	n-w	n-w	nil	29–87	Strong head wind; high
1					head sea; ship rolling and
2					pitching heavily.
3					
4	n-w	var	nil	29–87	Fresh var. breeze; clear;
5					sea moderate.
6					6:45—Sun setting bore
7					by compass n. 57° w.
8	n-w	var	nil	29–90	Light var. breeze; clear;
9					sea moderate.
10					
11					
12	n-w	var	nil	29–91	Do., Do.

* Wind suddenly shifted to n-w; took in sail fore and aft; weather squally.

Bearing and Distance, at Noon:—Course, n., 25° w.; Latitude observed, 28°02′n.; Longitude (by chronometer), 78°30′w.

Distance, 57 miles.

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Monday, May 21, 1894.*
2					
3					
4	n-w by n	n-w x n	nil	29–91	Light breeze and clear;
5					sea moderate.
6					
7*					
8	n-w-½n	n-w x n	nil	29–94	Fresh breeze; clear; sky
9†					cloudy; moderate sea.
10					
11					
12	n-w by n	n by e	2	29–99	Fresh breeze and strong
1					northerly swell.
2					
3					
4	n-w-½n	var	nil	29 98	Light var. breeze; clear;
5					sea smooth.
6					
7					
8	n-w-½n	s-e	2	29–96	Fresh breeze; clear; sea
9‡					smooth.
10					
11					
12	n-w-½n	south	3	29–98	Do., Do.

* Shut steam off steam steering gear; steered by hand through the day.

† 9:30—Set the two trysails.

‡ 9:30—Reshipped steam steering gear.

Bearing and Distance, at Noon:—Course, n., 35° w.; Latitude observed, 29°30′n.; Longitude (by chronometer), 79°21′w.

Distance, 108 miles.

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Tuesday, May 22, 1894.*
2					
3					
4	n-w by n	w-s-w	3	30–00	Fresh breeze; clear; sea
5					smooth.
6					
7					
8	north	n-w x w	3	30–04	Light breeze; clear; sea
9*					smooth.
10†					
11					
12				30–01	Weather fine and clear;
1					light var. airs and calm.
2					
3					
4	s-e by s	s-e	nil	29–97	Fresh breeze; clear; sea
5‡					moderate.
6§					
7					
8					
9					
10					
11					
12	s-e by s	s-e	nil	29–97	Weather, Do.

* Took in sails fore and aft.

† 10:15—Hauled tow rope on board; tug Dauntless going into Brunswick for coal; dropped anchor in six fathoms of water, six miles off St. Simon's Island; L. H. bearing w-n-w.

‡ Fresh s-e breeze; ship rolling; funnel guys strained and carried away.

§ 6:45—Hove up anchor and proceeded in tow of steamer Dauntless, bound for Newport News. Fresh s-e breeze; clear; sea moderate.

Bearing and Distance, at Noon:—Course, n., 47° w.; Latitude observed, 31°03′n.; Longitude (by chronometer), 81°15′w.

Distance, 135 miles.

Lights, look-outs, tanks and pumps carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Wednesday, May 23, 1894.*
2					
3					Took sails in.
4	n-e by e	var	nil	29·95	High var. breeze; clear;
5					sea moderate.
6					
7					
8	n-e by e	var	nil	29·95	Weather Do.; moderate
9					southerly swell.
10					
11					Set sails fore and aft.
12	n-e by e	south	3	29·94	Fresh breeze and clear;
1					sea moderate.
2					
3					
4	n-e by e	s-s-w	3	29·92	Fresh breeze and clear;
5					sky cloudy; sea moderate.
6					
7					
8*	n-e by e	n-w	nil	29·91	
9					
10					
11					
12†	n-e by e	var	nil	29·89	

* Wind suddenly shifted round to n-w; Thunder and heavy flashes of lightning to s-w and n-w; sky assuming a most threatening appearance; sea confused. 8:30—Thunder storm broke, with blinding flashes of lightning; wind blowing with great fury from the n-w; heavy rains.

† Light breeze; sky still; presenting very threatening appearance.

Bearing and Distance, at Noon:—Course n., 81°e.; Latitude observed, 31°36′n.; Longitude (by chronometer), 77°24′w.

Distance, 203 miles.

Lights, look-outs and tanks carefully attend to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Thursday, May 24, 1894.*
2					
3					
4	n-e-½n	west	nil	29-85	Fresh breeze; moderate
5					sea; sky cl'dy and overcast.
6					Set sails fore and aft.
7					
8	n-e-½n	west	4	29-87	Weather Do.
9					
10					All available canvas set,
11					to assist ship along.
12	n-e-½n	west	4	29-87	Do., Do.
1					
2					
3					
4	n-e-½n	w-s-w	4	29-85	Fresh breeze; clear; sea
5					moderate.
6*					
7					
8	n-e-½w	w-n-w	4	29-86	Strong breeze; clear; sea
9					moderate.
10					
11					
12	n-e-½w	w-n-w	4	29-87	Fresh breeze; clear; sea moderate.

* Took all canvas off, with the exception of standing trysails and staysails.

Bearing and Distance, at Noon:—Course, n., 49°e.; Latitude observed, 32°51′n.; Longitude (by chronometer), 75°43′w.

Distance, 143 miles.

Lights, look-outs and tanks carefully attended to.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Friday, May 25, 1894.*
2					
3					
4	n-e-½n	n-w	4	29–85	Fresh breeze and clear;
5					moderate sea.
6					
7					
8	n-e-½n	n-w	4	29–90	Do., Do.
9					
10					
11					
12*	n-e-½n	n-w	4	29–90	
1					
2					
3					
4	n-n-w	n-w	4	29–88	Weather Do.; sea smooth.
5					Took sails in fore and
6					aft
7					
8	n-n-w	n-n-w	nil	29–87	Light airs; calm; clear;
9†					sea smooth.
10					
11					
12	n-n-w	west	nil	29–90	Light airs; sea smooth.

* Weather fine and clear; light steady breeze; sea moderate; clear sky. 12:15—Course altered to n-n-w.

† 9:11—Body Island abeam; distance, eighteen miles; took cast of lead; no bottom at twenty fathoms.

Bearing and Distance, at Noon:—Course, n., 4°w.; Latitude (by account), 35°15′n.; Longitude (by account), 75°50′w.

Distance, 144 miles.

JOHN JONES, ACTING MATE.

Log of ss. "CLANDEBOYE," from Cardiff, toward Vera Cruz.

Chief Officer's Log.

HOURS	Ship's Head	Direction of Wind	Sail Set	Barometer	REMARKS, ETC.
1					*Saturday, May 26, 1894.*
2					
3					
4					
5					
6*					
7					
8	n-n-w			29–95	Light breeze; clear; sea
9					smooth.
10					
11†					
12					Fine, clear weather; all
1					sails set.
2					
3					3:40—Anchored at Old
4					Point Comfort, in twelve
5‡					fathoms water, with star-
6					board anchor and thirty
7					fathoms chain; waiting
8§					for the doctor.
9					
10					Anchor watch kept by
11					officers and crew.
12					

* Mate and three seamen returned on board, with lifeboat, twenty miles south of Cape Henry, from tug C. W. Morse.

† 11:45—Received pilot on board, off Cape Henry, and proceeded again.

‡ 5:30—Doctor cleared ship; hove up anchor and proceeded towards Newport News.

§ 8:30—Anchored in nine fathoms water, with starboard anchor and thirty-five fathoms chain, off Chesapeake and Ohio railway wharf.

Bearing and Distance at Noon:—Course, n of w; Latitude (by account), 36°55′n.; Longitude (by chronometer), 76°0′w. Distance, 101 miles. Draught, on arrival, 19′ 10″, forward; 20′ 10″, aft.

This day ended with light north'ly breeze; fine clear weather. Look-out from sunset to sunrise. Lanterns hung out from sunset to sunrise. Lights, look-outs and tanks carefully attended to.

HARRY T. HAY, MATE.

DEPOSITIONS FOR CLAIMANT.

DEPOSITIONS of THOMAS CONGDON, HARRY F. MORSE, and JOHN W. BLAISDELL, taken *de bene esse*, before WILLIAM F. JUDSON, notary public, on July 18, 1894, at New York.

Appearances,

Messrs. BUTLER, STILLMAN & HUBBARD (Mr. CROMWELL) for the claimant.

For the libellants, Mr. ROBERT M. HUGHES, of Sharp & Hughes, writes, accepting service of the notice of examination, and states that he does not desire to be present at said examination.

THOMAS CONGDON, being duly sworn, and examined as a witness for the claimant, testifies:

By MR. CROMWELL:

Q. What is your occupation? A. I am chief surveyor, in the United States, for Lloyds Register of British and Foreign Shipping.

Q. How long has that been your occupation? A. Twelve years in this country and twenty-six in the old.

Q. What is the nature of your occupation? A. To survey ships—their equipment, and the ships generally, throughout; to ascertain their fitness for this or that service or class.

Q. What class of vessels falls within your view, in examination? A. Steel, iron; occasionally wood. Both steam and sail ships.

Q. Where were you in the early part of June, last? A. At Newport News.

Q. Did you have occasion, while there, to visit the British steamer, known as the Clandeboye? A. Yes.

Q. Under what circumstances did you visit her? A. Having the steamship Oxford under my survey, at Newport News, I was asked, by Captain John Milbank, to take the opportunity, while I was there, to examine the chain cable of the steamship Clandeboye, and that is the reason why I examined her.

Q. You visited the Clandeboye for the purpose of making this examination? A. I visited the Clandeboye for the purpose of making this examination. I made a careful and complete examination of the chain cable.

Q. When was it that you did this? A. On the 8th of June.

Q. Which cable was it that you examined? A. The port cable.

Q. Where was the cable when you arrived at the ship? A. It was then all lying on the forecastle deck.

Q. Will you describe the examination which you made of the cable? A. The chain cable lying, some parts one upon another, could not very easily be examined. I then had the entire cable passed over the windlass and into the locker, examining every link, as the chain passed, until the whole chain, excepting what was necessary to remain out to be attached to the anchor, was in the locker again.

Q. Did you examine it link by link? A. I examined it link by link, not only by looking at it, but by measuring.

Q. What did you use in the measurement? A. My measuring instrument was a pair of calipers, which I always carry.

Q. What was the result of this measurement? A. That the cable maintained its size throughout.

Q. All the links were of uniform size? A. All the links were of uniform size, and it had deteriorated but slightly from its original dimensions.

Q. What did you find the dimensions of the several links to be? A. One inch and 11-16ths in diameter; that is, of the iron forming the link. The original size was 1 12-16ths; the difference being the usual wear and tear that we find, in our experience, to take place.

Q. What was the length of the links? A. Each link 10½ inches in length by 6 inches in breadth.

Q. Were the links plain, or did they each have a stud? A. They each had a stud.

Q. How did you find the condition of the studs? A. The studs were all there; there were no studs absent.

Q. Did you find any evidence of strain anywhere? A. None, whatever.

Q. In general, what did you find the condition of the cable to be? A. The cable was an excellent cable.

Q. Any evidence of unusual wear in any part? A. Not the slightest.

Q. Any abrasions or cuts of any kind? A. None at all.

Q. Did you look with special reference to such injuries? A. Yes.

Q. You stated, I think, that the cable was originally 1 12-16ths, but the result of your measurements showed it to be now 1 11-16ths. To what do you attribute that uniform loss in each link? A. Simply ordinary wear and tear, by the use of the cable since the ship was built; it was the result of six years' wear and tear.

Q. Did you find any cuts or bruises upon the part of the cable next to the anchor? A. There were no marks or abrasions of any kind on the cable; the only thing to be seen wrong with the links was bits of coral that had adhered to the iron by the cable lying upon the ground.

Q. Did you make any memoranda, at the time, of your examination? A. Yes, I have it here in my book; made on the ship at the time.

(The book is produced, and page 125 is offered in evidence, and marked "Claimant's Exhibit 1" of this date.)

The witness: It reads as follows:

"Newport News, 8th June, 1894. Clandeboye: Examination of chain cable; all the port cable out of the locker and lying on the forecastle deck. Had the cable returned to the locker, examining every link as it passed through the windlass. Found that the cable, excepting about ninety fathoms, next the anchor, had not been recently used; the ninety fathoms referred to only showing marks of coral on the links of the first fifty fathoms. Cable in perfect condition. Size of cable, carefully measured, 1 11-16ths (pencil sketch of link); size of link, 10½ by 6."

Q. Are you familiar with windlasses, and their construction? A. Yes.

Q. What is the messenger chain, connected with a windlass? A. It is a chain passing from a steam winch, on the deck, around a wheel, on the windlass, called the messenger

wheel. This chain runs as an endless chain, over the wheels, and is used for hoisting the anchor.

Q. When a ship is at anchor does any strain come upon this messenger chain? A. None, whatever. I may say that the messenger is but a small chain; it wouldn't be more than five-eighths of an inch in diameter.

Q. How would the messenger (or pulley) chain be strained, or the pulley chains, that carry it, be stripped? A. By the strain wrought upon the chain in starting the anchor out of the ground. That would much depend upon how the steam winch was started, and how firmly the anchor held in the ground. For instance, if they start the winch quickly it is liable to strain the messenger chain, if the anchor holds firmly in the ground.

Q. But the strain of the messenger chain only comes when the winch is put in motion? A. Only when the winch is put in motion.

Q. And no strain comes upon it when the ship rides at anchor? A. No strain otherwise.

No cross-examination.

HARRY F. MORSE, being duly sworn and examined, as a witness for the claimant, testifies:

By Mr. Cromwell.

Q. What is your occupation? A. Shipping and vessel owner.

Q. What class of vessels? A. Sailing and steam vessels.

Q. Ocean-going tugs among them? A. Yes.

Q. What class of work do your tugs do? A. We have inland and sea towing.

Q. Is the tug Morse one of your vessels? A. Yes, sir.

Q. In what service do you employ her? A. She is used entirely for sea towing.

Q. For what kind of vessels? A. We tow a great many coal barges, in the transportation of coal, and ships, from one port to another.

Q. Large steamers? A. Yes, when they are disabled; if they need our services.

Q. The Morse is a large and powerful ocean-going tug, is she? A. She is the largest tug on the coast.

Q. Are you familiar with her dimensions? A. About 175 feet long; thirty-two feet beam, and seventeen or eighteen feet depth of hold.

Q. What kind of engines has she? A. She has compound engines.

Q. How many horse power, do you know? A. No; we go by size, more; about 1,000 or 1,100.

Q. Is she a considerable coal carrier? A. She only carries coal for her own consumption; she can carry about 400 tons of coal.

Q. That will carry her how far? Last her how many days? A. She will steam pretty near thirty days, steady running.

Q. Where was the Morse about the middle of May, last? A. She was on the coast, between Maine and Virginia, towing.

Q. Say on the 15th of May, where was she? A. She was in Philadelphia.

Q. Did you receive any offers for the employment of the tug about this time; about the 15th or 16th of May? A. The first intimation of such employment that I received was a copy of a telegram sent to the Merritt Wrecking Company, by J. F. Minis & Company, of Savannah, Georgia, for a tug to tow a steamer, in distress, off the Bahama Banks.

Q. What reply did you make? A. I sent a telegram to Messrs. J. F. Minis & Company, of Savannah, Georgia, the people through whom the Merritt Wrecking Company had received inquiry. I read, from our letter-press copy-book of telegrams, as follows:

"New York, May 16, 1894.

Messrs. Minis & Co., Savannah, Ga.

Can send our tug C. W. Morse from Philadelphia tonight or tomorrow morning and tow steamer Clandeboye to Tybee for three thousand dollars to Havana four thousand dollars to Vera Cruz five thousand dollars with the understanding steamer lies afloat Should steamer leave there before Morse reaches there and tug should not tow her will want one thousand and five hundred dollars Merritt requested

us telegraph you We refer you to Atlantic Insurance Company Morse & Co."

Q. Who were J. F. Minis & Co., of Savannah? A. I don't know them, at all; I had never had any correspondence with them, or any business with them, before.

Q. They were the agents of the Clandeboye? A. Evidently they were; but I don't know that. They paid us for doing the work, and we traded with them.

Q. Did you receive any reply from Messrs. Minis & Co., to your telegram of the 16th, and if so, what? A. Yes, we received this telegram, which I produce.

(The telegram is offered in evidence, and marked "Claimant's Exhibit 1," and is as follows):

"Savannah, Ga., May 16, 1894..

Morse & Co.

Have cabled your offer will communicate with you soon as receive reply J. F. Minis & Co."

Q. Did you, later, receive any further word from them? A. Yes; which I produce.

(The telegram is offered in evidence, and marked "Claimant's Exhibit 2," and is as follows):

"Savannah, Ga., May 17, 1894.

Morse & Co.

Accept your offer of yesterday to tow Clandeboye to Vera Cruz for five thousand dollars In event steamer leaves Bahamas before Morse reaches there you to receive fifteen hundred dollars Morse to leave Philadelphia today Can you call at Tybee on your way down for chief officer three men and life boat Will have them in readiness if you will indicate what time you will be there Wire reply immediately

J. F. Minis & Co."

Q. What reply did you make to that telegram? A. I read, from our letter-press copy-book, our reply, as follows:

"New York, May 17, 1894.

J. F. Minis & Co., Savannah, Ga.

Tug Morse has left Philadelphia for Clandeboye Will call at Tybee and get men Will charge reasonable price for

time used running off her course Have men at Tybee Saturday night and wait there for tug Morse Morse & Co."

Q. Can you let us have your letter-press copy-book, which contains copies of these telegrams? A. No; because it pertains to our other business. But I am perfectly willing that you shall make copies of the telegrams that I read.

Q. What did you hear from them next? A. The telegram which I now produce.

(The telegram is offered in evidence, and marked "Claimant's Exhibit 3," and is as follows):

"Savannah, Ga., May 17, 1894.

Morse and Co., New York.

Please wire immediately charge for Morse taking four men and life boat from tug at Sea Buoy they to be in readiness on arrival Morse This information very essential to us as well as owners J. F. Minis & Co."

Q. What did you reply to that? A. I read our reply, from our letter-press copy-book, as follows:

"May 19, 1894.

J. F. Minis and Co., Savannah, Ga.

Charges will be reasonable See letter Unable to procure coal Philadelphia Obliged to coal tug Norfolk Have men in tug board Morse off Tybee daylight Monday morning Morse & Co."

That letter is probably mislaid. Then they sent us a telegram to the effect that they must have a definite price. That telegram is also mislaid. Then we sent another telegram, of which I have a copy in this press copy-book, as follows:

"J. F. Minis & Co., Savannah, Ga.

Two hundred dollars. Morse & Co."

Then they sent us the telegram I now produce.

(The said telegram is offered in evidence, and marked "Claimant's Exhibit 4," and is as follows):

"May 19, 1894.

Morse & Co., N. Y.

Price satisfactory Will have men Sea Buoy off Tybee daylight Monday Please wire if any further delay Morse.

J. F. Minis & Co."

Q. What further correspondence did you have, by telegraph? A. Next, we sent the following, which I read, from our press copy-book:

"New York, May —, 1894.

J. F. Minis & Co., Savannah, Ga.

Morse passed out Cape Henry 12:30 to-day No doubt will be Sea Buoy daylight Monday morning Be sure have men there by that time. Morse & Co."

Then, later, we sent also the following telegram, which I read, from our letter-press copy-book:

"May 22, 1894.

J. F. Minis & Co., Savannah, Ga.

Please telegraph us what time Morse left Sea Buoy with men Morse & Co."

To which we received the telegram I now produce, in reply.

(The telegram is offered in evidence, and marked "Claimant's Exhibit 5," and is as follows):

"Savannah, Ga., May 22, 1894.

Morse & Co.

Morse left Sea Buoy with men six (6) p m yesterday.
J. F. Minis & Co."

Q. What word, if any, did you receive, about this time, about the Clandeboye and her movements? A. I got some report, evidently after this telegram, probably from the Maritime Exchange, which was the occasion of the following telegram, which I read, from our letter-press copy-book:

"New York, May 22, 1894.

J. F. Minis & Co., Savannah, Ga.

Is report true Clandeboye towed into Brunswick We expect you arrange for Morse to tow her to Vera Cruz or wherever she goes We will probably hear from Morse to-morrow Morse & Co."

Then we received the reply from them, which I now produce.

(The telegram is offered in evidence, and marked "Claimant's Exhibit 6," and is as follows):

"Savannah, Ga., May 22, 1894.

Morse and Co.

Have nothing authentic but believe report true Have wired Brunswick for full particulars J. F. Minis & Co."

Q. What was the next information you received? A. The telegram which I now produce.

(The telegram is offered in evidence, and marked "Claimant's Exhibit 7," and is as follows):

"Savannah, Ga., May —, 1894.

Morse & Co., N. Y.

Agents Brunswick tow boat wire us Clandeboye on way Newport News in tow Brunswick tug

J. F. Minis & Co."

Q. What further telegrams did you receive from J. F. Minis & Company? A. We then, on May 30th, received the telegram I now produce.

(The said telegram is offered in evidence, and marked "Claimant's Exhibit 8," and is as follows):

"Savannah, Ga., May 30, 1894.

Morse & Co., 80 Broad Street, N. Y.

Think last item Clandeboye bill excessive Can't you reduce total to nineteen hundred J. F. Minis & Co."

Q. What reply did you make to that? A. Our reply was as follows. I read, from our letter-press copy-book:

"New York, May 31, 1895.

J. F. Minis & Co., Savannah, Ga.

Nineteen hundred dollars will be satisfactory if you will send us your check Answer Morse & Co."

And to that, we received, in reply, the telegram now produced.

(The said telegram is offered in evidence, and marked "Claimant's Exhibit 9," and is as follows):

"Savannah, Ga., May 31, 1894.

Morse & Co.

Will mail you check nineteen hundred dollars today

J. F. Minis & Co."

Q. Besides these telegrams, did you have correspondence, in writing, with Messrs. J. F. Minis & Company? A. Yes, sir; I can produce, if you desire it, our letter-press copy-books, containing our letters to them, and their original letters to us.

The first letter we received from them was as follows:

"Savannah, Ga., May 16, 1894.

Morse & Co.

Gentlemen:

Immediately on receipt of your telegram, of this date, we cabled owners of the steamship Clandeboye your offer, and telegraphed you in reply what we had done. We hope to hear from them the first thing in the morning, when we shall communicate with you further in regard to this business.

Yours truly,

J. F. Minis & Co."

Then we wrote them as follows:

"New York, May —, 1894.

J. F. Minis & Co.

Gentlemen:

Enclosed please find copy of telegrams which have passed between us and which we think will serve the purpose of a contract. If the steamer should have to move to some other port for repairs, after finishing discharge at Vera Cruz, we would be pleased to make a bid for our tug to wait there for her and to tow her to New Orleans, Pensacola or Newport News, as the steamer may wish to go. Kindly let us hear from you on receipt of this. Thanking you for your promptness in answering telegrams, we remain, yours,

Morse & Co."

We received from them another letter, as follows:

"Savannah, Ga., May 17, 1894.

Morse & Co., N. Y.

Gentlemen:

We enclose copy of telegram, sent you this morning, and now have to own receipt of your reply advising that your tug, the C. W. Morse, had left Philadelphia for Clandeboye, and will call at Tybee to get the four men and lifeboat belonging to this vessel's crew. We note that you will make a reasonable charge for the time consumed in stopping at Tybee, and as we have to advise the owners and Captain of the Clandeboye exactly what arrangements we have entered into, we will

be pleased to have you wire us, on receipt of this, what the charge for this service will be. We would also like to have you embody, in the same message, the list of your instructions to the Captain of the Morse, regarding Tybee; that is, whether we shall expect the Morse to come into his stoppage at Tybee Roads for the men, or if we shall arrange to have them meet her at the outer buoy. Also advise us, as soon as possible, at what hour you may be expected, as we will, in all probability, have to engage a tugboat to take the men down and put them aboard the Morse, and of course the longer said tug is detained on this mission the greater the expense will be. We would like to have the above information, by wire, as early as possible on Saturday morning, to enable us to make the necessary arrangements here. Yours,

J. F. Minis & Co."

There were a number of letters that passed between us, the originals of which (from J. F. Minis & Co.,) I have; and our letter-press copies of letters sent us I also have, and am willing to produce, if required. They were principally confirmatory of the telegrams which I have just testified to, and covered the same general ground. The whole business was done by telegraph; the letters were simply confirmatory.

Q. The last telegram states "will mail you check, nineteen hundred dollars to-day." Did you receive that check, and get the money? A. Yes.

Q. And that was in payment for the services of the Morse? A. Yes.

JOHN W. BLAISDELL, being duly sworn, and examined as a witnesss for the claimant, testified:

By MR. CROMWELL:

Q. What is your occupation? A. Originally, engineer, but now superintendent for Mr. Morse, ashore, for his vessel property, tugs, barges, etc. I am their regular out-door man.

Q. You are familiar with all their vessels, therefore? A. Yes, sir.

Q. Do you know the Morse? A. Yes, sir.

Q. What kind of a vessel is the Morse? A. She is an ocean steam tug.

Q. Powerful tug? A. Yes, sir.

Q. How does she compare with other tugs? A. I don't know of anything on the Atlantic coast—a tug—that equals her power. There are ships that are doing towing, but nothing in the tug line that has her power.

Q. What are the dimensions of the Morse? A. The hull is about 170 feet long, thirty-two feet beam, and, I think, seventeen feet depth of hold. I wouldn't give it exactly, because I have forgotten it. Her engines' diameter—compound engine, thirty high and fifty-four low; thirty-six stroke; about 100 lbs. of steam.

Q. How much coal can she carry? A. She carries up to 400 tons, easy. We had, at that time, 360 tons in her, on that trip.

Q. And that would run her about how long, at her usual speed? A. That ought to run her about thirty days.

Q. Did you have anything to do with the Morse during her trips south, recently, with the object of towing the steamer Clandeboye? A. Yes, sir; I went to Norfolk and joined her, to see to the coaling up and fitting her out for the cruise.

Q. Is it among your duties to go out on salvage expeditions with that tug? A. Yes, sir; I have been a number of times.

Q. And superintend the operation? A. Yes, sir.

Q. And act as the agent of the Messrs. Morse & Co., her owners? A. Yes, sir.

Q. You were on this expedition, I understand you? A. Yes.

Q. Joining her at Norfolk? A. At Norfolk.

Q. Where was she, before her arrival in Norfolk? A. She left Philadelphia; she was ordered from Philadelphia, and I went down by rail, to join her at Norfolk and fit her out there.

Q. When did she get away from Norfolk? A. May 19th we left Norfolk, at 10 a. m.

Q. Where did she go from Norfolk? A. Direct to Tybee.

Q. When did she arrive there? A. She arrived at Tybee the 21st, at 6 p. m.

Q. What did you find there? A. We found a tug, with the first officer of the Clandeboye and three men and a lifeboat. We took them aboard, and left there at 6.30; only about thirty minutes getting the crew and the boat hoisted up.

Q. Then were did you go? A. We shaped our course, then, for the Bahamas.

Q. That was where you had been informed the Clandeboye was? A. Yes, we had her location. I had a letter to that effect—latitude and longitude—and we struck our course for that.

Q. How long were you getting there? A. We arrived at Bahama Banks the 23rd, at 7 a. m.

Q. Did you find the Clandeboye there? A. No, sir; we did not. We ran across some fishermen on the banks, fishers or sponge-catchers, and inquired of them, and they said she had left, and gave us the date of Sunday; but it was earlier than that. I don't think they knew the day of the week.

Q. What did you do with the Morse, then? A. We were there about an hour, and left at about 8 a. m. for Tybee; made a straight course for Tybee. We sailed around—she couldn't have run on to any bank, or behind any land there; it is shoal; we weren't on the shoals there, so she couldn't get in; it wouldn't have been safe to let her in.

Q. So if she had been in there anywhere near, you would have found her? A. Yes, sir; after we had searched an hour we left that spot at 8 a. m., and got information that a tug had come and taken her, from these fishermen. We arrived at Tybee, on our way back, the 24th, at 1 p. m., to inquire if she had been heard from, and learned that she had passed there the morning of the 23rd, about 4 o'clock, still in tow.

Q. So that you didn't leave the men at Tybee? A. No.

Q. But took them on to put them on board the Clandeboye? A. Yes.

Q. Did you afterwards see her, or anything of her? A. We did; yes, sir.

Q. When was that? A. May 26th we overhauled tug Dauntless, with steamship Clandeboye in tow, off False Cape; put crew on board. (Referring to memorandum book.)

Q. Where is False Cape? A. About twenty miles below Cape Henry.

Q. When you overhauled her she was proceeding in tow of the Dauntless, was she? A. Yes, sir.

Q. Did you have a good look at the Dauntless? A. Yes, went up along by her. I went aboard of the Clandeboye, my-

self. I made a contract with these men. Went aboard, in the boat, and got the Captain of the Clandeboye to sign a contract, on delivering these men. That was an extra. We went to Tybee on our way back. Of course, that was out of our way, considerable, and took up a good deal of time.

Q. How does the Dauntless compare, in size and power, with the Morse? A. There is hardly any comparison to be made, as far as a boat suitable for sea towing is concerned; particularly the towing of steamers of such size as the Clandeboye. She is one of these small coast boats. She is large, for a harbor boat, but a small coast boat. She is without spars. She had a three-knot current with her. I doubt if it hadn't been for the Gulf Stream if she was a powerful enough tug to handle the Clandeboye, at all, if she had had any breeze ahead, or in any kind of bad weather.

Q. What is the tonnage of the Morse? A. Five hundred and nine.

Q. What was your estimate of the tonnage of the Dauntless? A. Forty-five or fifty, probably, net, or a little more than that; probably eighty tons, gross.

Q. How long did you keep company with the Clandeboye? A. Long enough for me to go aboard; probably we was half an hour in company. I put the crew on.

Q. Where did you then proceed? A. Proceeded on our course to Norfolk; arrived there on the 26th, at 12 m., and got orders from there for the tug to go to Booth Bay, direct, and I came to New York by rail.

Q. Did you see the Clandeboye or the Dauntless again? A. Yes, sir; I saw her steaming up towards Newport News and Hampton Roads as I went out to Cape Charles, on my way to New York.

DEPOSITIONS FOR CLAIMANT.

JOHN COOPER HARRIS and WILLIAM M. TUPPER, before GEORGE W. OWENS, Esq., at his office in the City of Savannah, under a Notice of Examination, in August, 1894.

Said JOHN COOPER HARRIS being duly sworn, did make answer to the questions propounded of him, as follows:

DIRECT EXAMINATION.

By W. W. MACKALL, Esq., for the claimant:

Q. State your name, age, residence and occupation? A. John Cooper Harris; 37 years of age; residence, Savannah, Ga.; occupation, that of a commission merchant and ship broker.

Q. With what firm are you connected? A. J. F. Minis & Company; composed of J. F. Minis and myself.

Q. Have you had any business relations with the steamship Clandeboye? A. Yes, sir.

Q. Give a detailed statement of your connection with said steamship? A. On the 15th of May, 1894, in the morning; when I got to our office, about 8:30 or 9 o'clock, I found the chief officer of the steamship Clandeboye, named Hay, awaiting me. He told me that the steamer was disabled by the breaking of her tail-end-shaft, and that she was then lying, or rather had been, some five days previous, north of the Bahama Islands, in about thirty fathoms of water. He said he had been sent out from the steamer to get into the Gulf Stream or to get to the coast, and that after knocking around (that was his expression) the Gulf Stream for a day or two without finding any steamers, he concluded he had better make a port. Finally, he reached Tybee Island, came up to the city, and called upon us for assistance to get tow-boats, to go to the asstance of the Clandeboye.

Q. Did he, or not, employ your firm, as the agents of the Clandeboye, for the purpose of getting assistance? A. He did.

Q. Did he, or not, give you the names of the managing owners of the steamship? A. He did; Carlisle & Company, London.

Q. Did you, or not, communicate with the owners, in reference to the Clandeboye's condition? A. I did; by cable.

Q. Did, or not, the owners of the Clandeboye ratify the agency of your firm? A. Yes, sir; they did.

Q. Has it not been ratified? A. Yes, sir,

Q. State, in detail, every step you took, looking to the procurement of assistance for the steamship Clandeboye? A. The

first thing I did, after consulting with the mate, was to wire Carlisle & Company, London, the owners, the position of the ship, and asked for instructions. The tenor of the message was that the mate and three of the men were here, in the life boat, having left the ship, which had broken her tail-end-shaft, off the Bahamas; that the mate suggested two boats. They answered back and asked what it would cost to get two powerful tugs to go to the assistance of the Clandeboye. I immediately opened communication with the Merritt Wrecking Company, of New York; Peter Wright & Sons, Philadelphia, and the Boston Tow Boat Company.

Q. Have you copies of the telegrams you sent? A. Yes. I sent a telegram, alike in its tenor to all three of the parties mentioned. I give you the tenor of the one to the Merritt Wrecking Company, as follows: "Wire immediately lowest pay for two powerful tugs to tow steamer about one thousand four hundred and fifty tons net register, now anchored off Bahamas, in latitude 27°10′ north, longitude 78°3′ west, with tail-end-shaft broken, mean draft about twenty feet, to Havana, Vera Cruz or Savannah. Bid for each port separately. What is the earliest moment tugs could start? Answer immediately." A similar telegram, as I said, was sent to Peter Wright & Sons and the Boston Tow Boat Company.

Q. Give the answers, if any? A. Merritt Wrecking Company answered as follows: "Not prepared to furnish two steamers for towing. Will endeavor to get prices from others here if you wish." Peter Wright & Sons refused to do anything. Had no bids to offer. The Boston Tow Boat Company answered: "Our steamer Orion due New York tomorrow. If what you want, will wire prices tomorrow."

(The telegrams from the Merritt Wrecking Co., and Boston Tow Boat Company are identified by commissioner.)

On the 15th, in reply to this telegram from the Boston Tow Boat Co., I wired: "Please wire bid early as possible in morning for services Orion, in accordance with our todays' telegram."

I then wired them: "Answer quick for us to cable earliest date Orion could leave for disabled steamer, in case your offer accepted." On the 16th, I have a telegram from the Boston Tow Boat Company, which reads: "To Savannah, thirty-five

hundred dollars; to Havana, forty-five hundred dollars; to Vera Cruz, seven thousand dollars."

I wired, in reply to that, to the Boston Tow Boat Company: "What horse-power has the Orion?" The mate had said it was necessary to have two tugs, and I had wired the owners for two tugs, and these people only offered one; I wanted to find out its horse-power. They replied: "Orion about one thousand horse-power. Has patent towing machine; steel hawser. Owing to strike will have to come to Boston to bunker coal. Will probably start south Monday next."

On the 17th, I sent the next telegram to the Boston Tow Boat Co., as follows: "Have secured prompter boat to tow Clandeboye to Vera Cruz." Here is a telegram, on the 17th of May, from the Moran Towing Company, of New York, which reads: "Can send at once two large powerful tugs to tow steamer from Bahamas to Havana, Savannah, or Vera Cruz for five, six and twelve thousand, respectively; answering your telegram to Merritt."

Q. In order to save time, state whether, or not, you did employ a tow boat? A. I did; from Morse & Company.

Q. Take up the Morse & Co. matter, and give, in detail, your agreement with them? A. The first communication was from them. I presume they got their information from Merritt. They wired us on the 16th: "Can send our tug, C. W. Morse, from Philadelphia tonight or tomorrow morning, and tow Steamer Clandeboye to Tybee, three thousand dollars; to Havana, four thousand; to Vera Cruz, five thousand; with the understanding steamer lies afloat. Should steamer leave there before Morse reaches there and tug should not tow her, will want fifteen hundred dollars. Merritt requested us to telegraph you. Refer you to Atlantic Insurance Company." In reply to that I wired them: "Have cabled your offer. Will communicate with you as soon as reply received." On the morning of the 17th, I wired Morse & Co.: "Accept your offer of yesterday to tow Clandeboye to Vera Cruz for five thousand dollars. In event steamer leaves Bahamas before Morse reaches there you to receive fifteen hundred dollars. Morse to leave Philadelphia today. Can you call at Tybee on your way down for chief officer,

three men and life boat? Will have them in readiness if you will indicate what time you will be there. Wire reply immediately." Their answer was: "Tug Morse has left Philadelphia for Clandeboye. Will call at Tybee and get men. Will charge reasonable price for time used running off her course. Have men at Tybee Saturday night and wait there for tug Morse."

Q. To whom does the telegram refer when it says have men at Tybee? A. Mate and three men, who came from the Clandeboye. The subsequent telegrams from Morse were about the time tug would reach here.

Q. Did you communicate the various telegrams to the English owners? A. I did; all except the one from Moran Towing Company. I had an offer, also, from local people, to do the work; the tow boat people here making the offer.

Q. State whether, or not, the engagement of the Morse, by your firm, was made under instructions from the owners? A. It was.

Q. State whether, or not, you made an effort, in Savannah. Charleston or Brunswick, or elsewhere, to do this towing service? A. I applied to the towboat people here, and they made me a bid of four thousand dollars to send two boats to tow her to Savannah, and then I tried two people in Charleston. I understood that they had some powerful tugs over there. I applied to J. J. Igo and W. G. Revel, but both refused, saying their boats were laid up, and they could not spare them.

Q. State whether, or not, the Morse stopped at Tybee? A. She did; on her way to the Clandeboye.

Q. State what happened? A. She left the Sea Bouy, at Tybee, at 6 p. m., May 21st. I don't know when she got there. The men were in a Savannah tug, at the sea bouy, waiting for the Morse.

Q. Was there any delay at Tybee? A. I can't swear as to that. The delay that occurred was caused by the inability of the tug to coal at Philadelphia, on account of a strike; then she encountered bad weather in coming out of Norfolk, where she went to coal.

Q. When did you next hear of the Morse? A. When she touched at Tybee, on her way back,

Q. State what you then ascertained, and from whom? A. I got my information from the Captain of one of the Savannah tugs? I don't know his name. He told me the Morse came into Tybee the day before, and asked him if he had had any tidings of the Clandeboye; that he had been to where she was and the boat was gone.

Q. You simply ascertained that the Morse had returned, stopping at Tybee, without the Clandeboye? A. Yes, sir.

Q. Do you know whether, or not, during your negotiations for a tug to go to the Clandeboye, the owners of the steam tug Dauntless, of Brunswick, had any knowledge of such negotiations? A. I found that out since; I did not know it at the time. I had no communication with them, at all, during my negotiations.

Q. When did you hear, if you did hear, that the tug Dauntless had gone to the assistance of the Clandeboye? A. I heard it a day or two before she was reported back to Brunswick. I got my information in an indefinite sort of way.

Q. Was, or not, that some time after the negotiations with the Morse closed? A. Yes, sir; it was.

Q. Did the owners of the Dauntless make any bid to tow the Clandeboye? A. No, sir.

Q. Did they give you any notice that they intended to go down to tow the Clandeboye? A. I never had any communication from them, at all.

Q. Was there any notice, or mention, made of that fact, that you saw, anywhere? A. No, sir; I say I heard it, on the street, a day or two before she got back.

Q. After the Morse returned, did you, or not, have any further communication with her owners, in reference to the matter? A. We had some correspondence about the charges for the services of the tug for touching at Tybee, to get the men, and taking them to the ship.

Q. Give a statement of that correspondence, attaching your telegrams received, and copies of those sent? A. There was some correspondence, in regard to those charges, prior to the Morse's arrival at Tybee. Taking up the correspondence where I left off, on the 19th of May, I wired to Morse & Co.: "Please wire immediately charge for Morse taking four men and lifeboat from tug at Sea Buoy, they to be in readiness on

arrival of Morse. This information very essential to us as well as owners." In reply they answered: "Charge will be reasonable; see letter. Unable procure coal Philadelphia; obliged coal tug Norfolk. Have men in tug board Morse off Tybee daylight Monday morning." They wired me: "Two hundred dollars." I wired them on the same day, the 19th: "Price satisfactory; will have men Sea Buoy off Tybee daylight Monday. Please wire if any further delay Morse." On the 19th they answered: "Morse passed out Cape Henry 12.30 today. No doubt will be Sea Buoy daylight Monday morning. Be sure have men there by that time." On the 22nd, they wired us as follows: "Please telegraph us what time Morse left Sea Buoy with men." To which we replied: "Morse left Sea Buoy with men 6 p. m. yesterday." Then we have a telegram from them, dated the same day: "Is report true Clandeboye towed into Brunswick? We expect you to arrange for Morse tow her to Vera Cruz, or wherever she goes. We will probably hear from Morse tomorrow" We wired in reply to that: "Have nothing authentic, but believe report true. Have wired Brunswick for full particulars." Later in the day we wired them: "Agents Brunswick Tow Boat wire us Clandeboye on way Newport News in tow Brunswick tug." On the 24th of May we sent a telegram to Morse & Co., as follows: "Incoming tugs report having spoken Morse off Tybee today noon. She proceeded northward."

The only other correspondence I had with them is touching the further charge for taking men back and landing them on the Clandboye, off Newport News. On the 30th telegraphed them: "Think last item Clandeboye bill exeessive. Can't you reduce total to nineteen hundred?" On the 31st they answered: "Nineteen hundred will be satisfactory, if you will send us your check. Answer?"

Q. As agent for the Clandeboye, state whether, or not, the owners incurred any expenses in regard to the engagement of the steam tug Morse? A. Yes, sir.

Q. Look at that statement and state what it is? A. It is an account against the Clandeboye for services and expenses for J. F. Minis & Co.

(This statement is attached hereto, identified by commissioner, as "Exhibit O").

Q. Were those expenses incurred by you, as agents for the owners of the Clandeboye? A. Yes, sir.

Q. And recognized as such? A. Yes, sir.

Q. The first item reads, "To amt. paid Morse & Co. for services tug C. W. Morse $1,900." Has that been paid? A. Yes. sir.

Q. What is the second item? A. The second item is $2.38, being one-eighth premium on New York exchange. That is what we had to pay at that time. The third item is $60.00, amount paid to Propeller Towboat Co., for a tug to take the men off Tybee and lying there to await the Morse.

Q. Is that a usual and reasonable charge? A. Yes, sir; it was in accordance with agreement. The next item is $36.00, paid Sam Reynolds for lodging men. That is for the men, who had to be lodged and taken care of while here. The next item is for the expenses of Hay, the chief officer, while here. The item of $159.86 is for telegrams and cablegrams; that is the amount we paid for cabling and telegraphing. The next is our charge of two-and-a-half per cent. commissions on disbursements, $54.08. This is the usual and customary charge. The next and last item is $400, for our services.

Q. Was that bill paid? A. It was.

(The telegrams received by J. F. Minis & Co. from J. J. Igo and W. G. Revel, of Charleston, declining to bid for the towing of the Clandeboye, are introduced in evidence and hereto attached, properly identified by the commissioner, as Exhibits "P" and "Q," respectively).

CROSS EXAMINATION.

By EMILE NEWMAN, Esq., on behalf of libellant.

Q. When this first officer, Mr. Hay, came to your office, did he bring letters with him from the master of the Clandeboye? A. No, sir.

Q. He simply came and reported the distress of the vessel? A. He said he had been sent out, by the master of the Clandeboye, to obtain assistance.

Q. When did you apply to the Savannah Tow Boat Co. for assistance? A. Fifteenth of May.

Q. Was that the same day you wired those parties north? A. Yes, sir.

Q. What day did you apply to Charleston? A. On the 16th, I think.

Q. Did you apply to Brunswick? A. No, sir.

Q. Why? A. Because it never occurred to me they had boats down there which could do the work.

Q. Are you acquainted with the tugs down there? A. No, sir.

Q. Had you ever heard of the steam tug Dauntless, of Brunswick? A. I think I had seen her.

Q. Did you consider her an available vessel at that time? A. No.

Q. Would you consider her an available vessel since these developments? A. Yes. If I had to do the thing over I would get offers from the tug Dauntless.

Q. You would, under all circumstances, consider the Dauntless an available vessel? A. I don't pretend that I am an expert on towboats. It did not occur to me that they had a boat in Brunswick for this service.

Q. A vessel having performed that class of services, which you know the Dauntless did, you would consider available? A. Yes, sir.

Q. The reason you did not apply to Brunswick was that you did not consider they had any boats there that could perform the service? A. Yes, sir.

Q. You at no time made any attempt to wire to Brunswick, to ascertain if they had any boats to do the service? A. No, sir; in that connection you must remember that I was under instructions from the owners to get this boat towed to Vera Cruz, if possible.

Q. When the Morse returned to Tybee did you get any information from her then? A. No, I only got it through the Captain of a local tug boat.

Q. When did you next hear from the Morse? A. I never heard anything from her until I got the bill, from her owners, for putting men on Clandeboye, and I wired the Captain of the Clandeboye to know if it had been done. He answered, "Yes."

Q. When did you first hear of the Dauntless having gone to the rescue of the Clandeboye? A. I should think it was

on the Saturday previous to the 22nd, which was Monday. I know it was two, possibly three, days before the 22nd.

Q. Do you remember at what time the report reached you that the Dauntless had towed the Clandeboye off Brunswick bar? A. I heard it on the 22nd of May, when I was down at Tybee. I heard it from some of the gentlemen who came down on the afternoon train. In the meantime our representatives, at our office in Savannah, had been telegraphing to Brunswick, to find out whether it was so.

Q. Did you wire to Brunswick when you came back to the city? A. The office had already done so.

Q. Did you get a reply? A. Yes; I have it here, and will read it, together with our telegram. I wired Coney & Parker: "If Clandeboye now in Brunswick have Captain communicate with us and owners, before proceeding. Answer." Coney & Parker, who are the agents, in Brunswick, of the tug Dauntless, answered as follows: "Steam tug Dauntless towed Clandeboye to Newport News. Tell men to meet her there with lifeboat." Later in the day another telegram came: "Clandeboye has left in tow Dauntless." We had letters, after that, in confirmation of those telegrams.

Q. Do you know, Coney & Parker? A. I know Mr. Coney, right well.

Q. Did you know, at the time you sent the telegrams, that Coney & Parker were agents for the tug Dauntless? A. I was at Tybee at the time the telegram was sent. The presumption is that the man who sent the telegram knew it. I did not know it myself.

Q. Do you remember anything about the state of the weather at any time between the 16th and 22nd of May? A. I don't recollect whether cold or warm, calm or blustery.

Q. Do you know anything, especially, about the weather on Sunday, May 20th? A. I know it was clear and nice on the 22nd, which was Tuesday.

RE-DIRECT EXAMINATION.

By Mr. Mackall.

Q. Was it, or not, a notorious fact that the mate and seaman, or some of the crew of the Clandeboye, had arrived in

Savannah, leaving their vessel, for the purpose of procuring assistance? A. It was notorious to this extent, that it was published in the daily papers.

Q. Did, or not, the owners or agents of the Dauntless make any inquiries, at all, of your firm? A. They did not. Up to the time the Dauntless arrived in Brunswick, with the steamer in tow, I had no communication with them.

Q. Did you, or not, receive bids from parties of whom you had made no specific inquiries? A. Yes, sir; from Moran and from Morse; the latter of which was accepted.

RE-CROSS EXAMINATION.

By Mr. Newman:

Q. Did you not state that the bid from the Morse Co. was made to you because of your telegram to Merritt? A. Yes, sir; and the other, from Moran, we got through information given by Merritt.

RE-DIRECT EXAMINATION.

By Mr. Mackall:

Q. No matter where the information came from, it did not come from you? A. No, sir.

"EXHIBIT O."

S. S. Clandeboye and owners in account with J. F. Minis & Company.

	Debtor.	Creditor.
To amount paid Morse & Co. for services tug C. W. Morse	$1,900 00	
To one-eighth per cent. premium on N. Y. Exchange for $1,900	2 38	
To amount paid Propeller Towboat Co.	60 00	
To amount paid Samuel Reynolds . .	36 00	
To amount paid H. Hay, Mate	5 00	
To amount paid for cables and telegrams	159 86	
To 2½ per cent. commission on disbursements ($2,163.24).	54 08	
To J. F. Minis & Co., services	400 00	
By cash received of Southern Bank, State of Georgia, on account		$1,500 00
By our sight draft on Messrs. Carlisle & Co., to balance, as per cable authority, £229 18s. @ $4.86		1,117 32
	$2,617 32	$2,617 32

E. E., Savannah, Ga., June 26, 1894.

J. F. MINIS & Co., Per E. L. Pead.

"EXHIBIT P."

"Charleston, S. C., May 16, 1894.

J. F. Minis & Co., Savannah, Ga.

We can not furnish tugs at present time. Some of them are laid up. W. G. Revel."

"EXHIBIT Q."

"Charleston, S. C., May 17, 1894.

J. F. Minis & Co., Savannah, Ga.

Confidence only sea-going tug in Charleston for that reason could not bid on tow as you want two tugs

J. J. Igo."

WM. M. TUPPER, a witness for the claimant.

DIRECT EXAMINATION.

By W. W. MACKALL, Esq., for claimant:

Q. State your name, age, residence and occupation? A. William M. Tupper; 45 years old; Brunswick, Georgia; I am in the towing and literage business, and agent for marine underwriters.

Q. Do you know the steamer Clandeboye? A. I have seen her.

Q. Do you know the tug Dauntless? A. Yes, sir.

Q. From what port does the Dauntless hail? A. Brunswick, Georgia.

Q. Who are the agents, in Brunswick, of the Dauntless? A. Coney & Parker.

Q. Has, or has not, Mr. Coney, of the firm of Coney & Parker, a brother in Savannah? A. He has; Walter Coney is his name; I don't know him, personally.

Q. Do you, or not, recollect the circumstances that the steamship Clandeboye was in trouble, some time during last May? A. Yes, sir.

Q. How did you first hear of the trouble? A. I saw it, I think, in the Savannah paper.

Q. Will you state whether, or not, you know that Coney & Parker, the agents of the Dauntless, also knew or had heard of the Clandeboye's trouble? A. Yes, sir.

Q. How do you know they had such information? A. I talked it over with them.

Q. Do you know whether, or not, the tug Dauntless started out to the assistance of the Clandeboye? A. She did.

Q. Do you recollect the date the Dauntless sailed? A. I do not.

Q. Do you know whether, or not, the Dauntless started to the assistance of the Clandeboye solely upon the information contained in the newspapers? A. I am satisfied she did.

Q. Did you, or not, hear, before the Dauntless started, that another tug had made arrangements to go to her assistance? A. Yes, I had heard of it.

Q. How did you receive the information? A. I read a

telegram, from Savannah, stating that a tug had been chartered and would start, or had already started, for the Clandeboye.

Q. Who showed you that telegram, and to whom was it addressed? A. It was shown me by Captain Lomm, and it was addressed to Coney & Parker.

Q. Who is Captain Lomm? A. Captain of the Dauntless.

Q. Had the Dauntless started prior to the reception of that telegram? A. No, sir.

Q. Had the Dauntless started when that telegram was shown you? A. No, sir.

Q. How soon after the receipt of that telegram did she start? A. Four or five hours.

Q. At the time the Dauntless started, Captain Lomm and Coney & Parker had received information that another tug had been employed to go to the assistance of the Clandeboye? A. Yes, sir.

Q. Were any suggestions, or statements, made by Captain Lomm, or Coney & Parker, with reference to the knowledge they had received from the telegram? A. I don't know of any; they came for my advice.

Q. They came, as agents of the Dauntless, for your advice? A. The Captain of the Dauntless came.

Q. What did you tell them? A. To go, by all means.

Q. Are you friendly with the tug boat people of Brunswick? A. Yes. My advice, however, was given as a citizen, and not as Lloyd's agent. I simply said if the tug was mine I would go. "First come, first served."

Q. Can you designate the day you saw that telegram? A. I don't think I can. I might do it if I had an opportunity of looking it up.

Q. By whom did the telegram purport to be signed? A. Walter Coney.

Q. Do you know whether that telegram was exhibited to other persons? A. I do not know.

CROSS-EXAMINATION.

By MR. EMILE NEWMAN, for libellant:

Q. You know Captain Lomm very well, do you not? A. Yes, sir.

Q. What is his general reputation, as Captain of the Dauntless? A. Excellent.

Q. What kind of boat is the Dauntltss? A. A very fine boat.

Q. Was she adapted to the kind of service she rendered the Clandeboye? A. I presume she was.

Q. You are a good judge of tug boats? A. I ought to be.

Q. Do you remember the contents of that telegram, about which you have been interrogated, purporting to have been signed by Walter Coney, to Coney & Parker? A. I can't tell you how it was worded. It was to the effect that the tug C. W. Morse had been chartered, and would sail that day, or had sailed, for the Clandeboye.

Q. You do not remember whether it stated that the tug had sailed or would sail? A. I do not remember.

Q. What time of day was it when you saw that telegram? A. About three o'clock.

Q. What time did the Dauntless start? A. About seven o'clock of the same day.

Q. At what time had you seen this information about the distress of the Clandeboye? A. I think one or two days previous; I can't be exact.

Q. When Captain Lomm showed you the telegram, he asked you for advice in the matter? A. He asked me what I would do, as a tug man.

Q. What did you say? A. I told him I would certainly go. He could lie there, even if he did no towing, and be paid, handsomely, for it.

Q. As Lloyd's agent, would you have given that same advice? A. As advice, I think I would.

Q. You were not interested in the Clandeboye? A. No, sir.

Q. Were you interested in her subsequently? A. I was, as agent for the underwriters.

Q. Have you seen the Clandeboye since? A. I have not.

Q. You saw her off the Brunswick bar? A. I did not.

Q. Do you remember the state of weather when the Dauntless sailed? A. Fair weather; ordinary weather.

Q. Was there anything said about the state of the weather, to you, by Captain Lomm? A. No, sir.

Q. Do you remember anything, as regards the state of the

weather, after the Dauntless sailed for the Clandeboye? A. I think the next day we had quite a severe nor'-wester.

Q. Do you remember the weather the day after that? A. I don't think we had any bad weather; the blow mentioned by me may have been local.

Q. You don't know anything about the state of the weather off the Bahamas? A. No, sir.

RE-DIRECT EXAMINATION.

By MR. MACKALL:

Q. Was your advice for them to go to the Clandeboye, and keep secret the fact that they knew a tug was coming to their assistance? A. No; I did not mention anything about what they were to do.

RE-CROSS EXAMINATION.

By MR. NEWMAN:

Q. In respect to that last question, do you know whether any attempt was made, by the agents of the Dauntless, or her Captain, to keep the matter secret? A. I don't know of any.

Q. They made no concealment of the fact that they were going? A. No.

RE-CROSS EXAMINATION.

By MR. MACKALL:

Q. Were not the movements of the Dauntless kept quiet and secret? A. I don't know that such is the case.

Answered, sworn to and subscribed before me this 28th day of August, 1894.

TESTIMONY TAKEN IN COURT.

Before HONORABLE R. W. HUGHES, Judge, on Tuesday, October 30th, 1894.

Present:

Messrs. SHARP & HUGHES (Mr. HUGHES), For Libellant, WHITEHURST & HUGHES (Mr. HUGHES), and BUTLER, STILLMAN & HUBBAARD (Mr. MYNDERSE) For Respondent.

CAPTAIN WILLIAM LAUDER, on behalf of the respondent, sworn.

Examined by MR. MYNDERSE:

Q. Are you a surveror, residing in Norfolk? A. Yes, sir.

Q. Did you attend upon the steamer Clandeboye, last fall, at Newport News? A. I did.

Q. Did you make any examination, there, of her port cables and anchors? A. Yes.

Q. Where were the cables and anchors, when you examined them? A. Hauled out of the lockers and ranged on the forecastle.

Q. In what condition did you find the cables and anchors? A. I found nothing wrong with them. There was a marine engineer there, with me, and we took a calipers and meausured the chain, and measured a great many of the links, and found no link less than 1 1-16th inches in diameter.

Q. They were uniform? A. No; that was the smallest there was; some larger than that; some are 1¾. There is no chain but there is a little difference in, and of course, this chain had some natural wear and tear on it, and in some parts, I suppose, wasn't as much worn through.

Q. Did you see any signs of abrasion or chafing? A. I saw signs of the rust being chafed off in some places.

Q. Anything that would effect the strength of the chain? A. No, sir.

Q. Or affect the substance of the chain? A. Nothing, at all.

Q. Did the chafe run into the iron, at all? A. No sign of anything ot that sort.

CROSS EXAMINATION.

By MR. HUGHES:

Q. What would you judge this abrasion you speak of? A. I didn't see no abrasion; the rust knocked off, in some places.

Q. What would you judge the cause of that abrasion? A. It might be the chain dragging over the sand or rocks on the bottom. I have often had a chain come up, that had been anchored some time, that looked scoured bright; cleaned off; but we rather like that. It cleaned away the rust, that is all.

Q. Did places of that sort show on this chain? A. There were places of that sort on this chain.

Q. Which showed that either the chain was weakened, or not. It had been rubbing on the rocks? A. Yes, sir.

Q. Could you tell, from the appearance of the chain, what kind of rocks they were? A. Yes, sir; it looked like it had been coral, because there was some white coral dried on the chain in spots—muddy coral; it looked like whitewash had been there.

Q. Then it indicated, to you, that it had been chafing on a coral bottom? A. It indicated that.

Q. You have not only had considerable experience as a marine surveyor, but have had considerable experience at sea, have you not? A. Yes, sir.

Q. Have you ever had any experience in coral regions? A. I have been all around the West Indies, but I don't know that I have ever been anchored on a coral bank.

Q. You know coral when you see it? A. Yes; I could not tell whether this was coral on the chain. It looked more like dried whitewash. It must have been in muddy coral, or it wouldn't have had this appearance, and it must have been slimy. If it had been hard rock, it would not have been white on it.

Q. When you saw that white on it your inference was that the Captain had been whitewashing his chain, or that it had been on a coral bottom? A. Yes, sir; soft coral, though, or it would not have left the stain.

(It is agreed, that while the chain was exhibited on the deck of the Clandeboye, at Newport News, after the libel was filed, that opportunity to survey the same, and notice to that effect, was given counsel for the libellants. Counsel for libellants admit that notice was served upon them to go to Newport News and examine the chain, stated to be the same, but they have no knowledge, of their own, as to whether it was the same or not.)

S. CURTIS, on behalf of the libellant, sworn.

Examined by MR. ROBERT HUGHES:

Q. What is your name, age, residence and occupation? A.

Samuel Curtis; aged 35; Brunswick, Ga.; occupation, stevedore.

Q. Have you ever had any experience at sea. If so, tell us, in a general way, what it has been? A. I have followed the sea fourteen years, in foreign-going ships.

Q. In what waters? A. In all the waters of the globe. In other words, around the globe.

Q. In what capacity? A. From seaman up to master.

Q. You understand navigation; are you a navigator? A. I am; yes, sir.

Q. Do you remember the trip that you took on the steam tug Dauntless to the steamship Clandeboye? A. Yes, sir.

Q. How did you happen to go on that trip? A. Captain Lomm employed me.

Q. You are not a regular member of the crew? A. No, sir.

Q. What place did he employ you to fill? A. As navigator and to take charge of one watch.

Q. He took you along, then, specially as navigator? A. Yes, sir.

Q. Tell us about the Dauntless; what kind of a boat she is, and how she compares with the boats along the southern coast, as far as you know. Are you acquainted with the tug Dauntless? A. Yes, sir.

Q. What kind of a boat is she? A. She is a new boat, a little over a year old, and I consider the best boat south of Hatteras, along the Atlantic coast.

Q. How is she, as to power; is she a powerful tug? A. Yes, sir, she is, for her size.

Q. How is she, as to her sea-going qualities? A. I consider her a good boat, sir.

Q. You say you consider her the best boat south of Hatteras. How would you compare her as to some of these big northern tugs? A. Well, I don't know just how you put that question.

Q. I mean, would you consider her anything like as good as some of these big northern tugs? A. I consider her as good as a great many of the tugs towing outside; towing from here to Boston.

Q. Now about this expedition. You left Brunswick, Ga., in the tug, to go to the relief of the Clandeboye. Can you

remember the dates, or have they passed out of your mind? A. It was on the 17th of May that we left Brunswick.

Q. And where did you find the Clandeboye lying. If you can indicate the place on this chart, do so by making pencil mark.

(The witness takes the chart, which is herewith filed, marked "Exhibit A," and marks the point where the Clandeboye was found with an "A," and answers):

A. We had no definite position of the ship; only the report, in the Savannah papers, that she was on the north-east side on the Bahama bank. We came down this coast to the Jupiter Inlet. At 12 o'clock we were in twelve fathoms of water, we then ran across the stream, and made this shoal water, on the north-west corner of the Bahama banks, at daylight, and then ran this coast right down.

Q. Then you ran along the northern beach of the Little Bahama bank until you found the steamer? A. Yes, sir.

Q. What was the name of the Cay near which you found her? A. Stranger's Cay.

Q. Indicate Stranger's Cay on that map?

(The witness marks the place "A.")

Q. That is without indicating it with the definite bearing? A. Yes, sir.

Q. How was the bottom there? A. A coral bottom, sir.

Q. What do you know of coral bottoms? A. Well, a coral bottom—there is little difference in it, some of it has more or less mud mixed in it, and the coral grows in little trees, like. It has little places out here with no substance to it, and then, again, the coral has clean branches.

Q. What kind of a bottom was that? A. That—as near as I can judge from the anchor, the coral was with some soft mud.

Q. What is your judgment about that kind of bottom as holding ground for anchors? A. I do not consider it *any* holding ground.

Q. Why not? A. The anchor will not take hold of it; would not get hold of it.

Q. How was that place? What would you say of the place

you found that vessel anchored, as to exposure? Would you consider it a dangerous anchorage ground, or not? A. I should consider it a dangerous anchorage ground.

Q. Why so? A. In case of northerly winds.

Q. Why would it be? A. It had no protection, whatever; it was open to the whole ocean.

Q. You went to the Clandeboye with the Captain. Did you hear any conversation between the Captain of the Clandeboye and Captain Lomm, while they were there; for instance, with reference to their pilot, that the Captain had engaged. Did you hear him say, at that time, why he had engaged him? A. Yes, sir.

Q. What was his statement?

(Question objected to, if it is intended to contradict any statement that Captain Strickland has made, and on the ground that no foundation has been laid for it.)

(Objection over-ruled.)

Q. Will you tell me what he said, as to his reason for employing Roberts, this pilot? A. He said he had Captain Roberts engaged, as a pilot, with five or six men—I don't know just how many—to pilot the boat in over the reef, in case they had to leave the ship; if the ship went ashore.

Q. Did he say anything why wreckers wanted to get the ship in the reef? A. I didn't hear him; I could not swear as to that, sir; I don't remember.

Q. Do you know whether the Captain of the Clandeboye sent his engineer aboard of the Dauntless before he would allow the Dauntless to tow him? A. Yes, sir; he did.

Q. For what purpose, do you know? A. To examine the engines, and see if he thought the boat was suitable to tow the ship.

Q. Well, did you notice the rig of the Clandeboye, as to sails. Did she have any sails, to amount to anything, or not? A. Nothing of any account; nothing but steadying sails.

Q. Would you say that she had canvas enough to navigate with? A. No, sir.

Q. Well, the Dauntless, as I understand, started, with this vessel in tow. What kind of weather did you have? A.

When we started from the banks, with the Clandeboye in tow, we had a light wind south-west, and somewhere just before midnight, that night, the wind jumped around to the north-east, and breezed up fresh, and got up a sharp sea, and afterwards backed to west of north, and continued until nine or ten o'clock, the next day, when it moderated for a few hours.

Q. How was the wind. Would you characterize it strong, or weak, or what? A. Well, it was a strong breeze of wind.

Q. What effect, if any, did it have on the sea? A. It made a very high sea. The sea was worse than the wind.

Q. What effect, if any, did it have on the towage? A. It stopped the boat, entirely, from towing. We just merely held her, and perhaps it dragged her back, a bit, during the heft of it.

Q. It was enough to stop the forward progress of the boat? A. Yes, sir.

Q. During that weather you have just spoken of would you consider that there was any danger to the tug, or her shaft, or propeller, or anything of that sort? A. Yes, sir, I considered there was danger of wringing the tug's shaft.

Q. What would have caused that? A. In racing; throwing the wheel out of water.

Q. You mean the sea was severe enough to make the propeller race? A. Yes, sir; threw it out entirely.

Q. How about the line you were towing by; suppose that line had broken, what danger would there have been, if any? A. The greatest danger would have been in getting in the propeller.

Q. Fouling the propeller? A. Yes, sir.

Q. Suppose it had not broken, but for some reason or other it was not taut, would that same danger exist? A. Not unless it got very slack, sir.

Q. As long as it was kept taut it was kept above the propeller? A. Yes, sir.

Q. Do you know how much coal the Dauntless carried? A. I think she carried about seventy-five tons, sir, loaded.

Q. Do you know how much she used a day? A. I don't know, exactly, sir; I think in twenty-four hours somewhere like eleven-and-a-half tons.

Q. Suppose that the towage had lasted so long, or the bad weather had lasted so long as to exhaust her coal supply, what is your judgment as to whether she could get coal from the Clandeboye? A. In bad weather it would have been almost impossible.

Q. Could not have laid alongside for the purpose? A. No, sir.

Q. After that spell, that of you speak of, you came along all right, to Brunswick? A. Yes, sir.

Q. How was the weather, generally speaking, from this on? A. Fine weather, with the exception of one night, when we had a very heavy squall on the north of us, of short duration.

Q. In the main, the weather, from Brunswick to Newport News, was fine? A. Yes, sir.

Q. How about the weather, after this first spell you speak of, to Brunswick, after that storm had gone down; how was the weather from this on to Brunswick? A. Moderately fine weather, sir.

Q. Did you notice, when they were hauling up the anchors of the Clandeboye, preparatory to starting; how did the anchor come up? A. Yes, sir, I was on the forecastle head of the steamer, and the anchor came away from the bottom, and no one appeared to know when it did leave.

Q. What did that indicate, as to the holding? A. It indicated that it had no hold at all.

Q. It came up very easy? A. Yes, sir.

CROSS EXAMINATION.

By Mr. Floyd Hughes:

Q. You say you have been at sea fourteen years? A. Yes, sir.

Q. What class of vessels? A. Deep water; merchant vessels, mostly; some steamers.

Q. What class? A. I was on a coal steamer on the California coast.

Q. On a coast steamer? A. A collier, coast steamer; yes, sir.

Q. What others? A. And this steamer, the Dauntless. I

have been on her, off and on, ever since she started from Philadelphia, when I came out on her.

Q. You came out from Philadelphia, around to Brunswick, on the Dauntless? A. Yes, sir.

Q. And, prior to that, you had been on one steamer, which was a coal coast-wise steamer? A. Yes, sir.

Q. In what capacity were you on that steamer? A. Quartermaster.

Q. That is your experience on steam vessels? A. Yes, sir.

Q. You say you were on the forecastle head of the Clandeboye when the anchor came up? A. Yes, sir.

Q. And that no one knew when it left the bottom? A. Yes, sir.

Q. How many fathoms of cable was out? A. They told me, on board the steamer, they had ninety fathoms.

Q. What water? A. About thirty fathoms. The chart gave that; I never measured the water myself.

Q. The only thing you know about the bottom, then, was what you saw on the anchor, when it came up? A. Yes, sir; I know about the bottom on the Bahama banks.

Q. And from the appearance of the anchor, as it came up? A. Yes, sir.

Q. You say they had no difficulty in bringing this anchor up? A. None at all.

Q. Did, or did not, the gipsy wheels strain, and were rendered unfit for use? A. Not to my notice. I did not see anything to that effect, or anything of that kind. I never heard anyone mention it. The windlass was not stopped, at all; it went right along.

Q. And, if there was any injury to those gipsy wheels, you did not know anything about it? A. I did not.

Q. How many men did the Dauntless carry? A. Nine men, I think, sir.

Q. State their positions? A. Captain, mate, deck-hand, two engineers, two firemen, cook, and myself, as navigator.

Q. You were an extra hand? A. Yes, sir.

Q. The regular complement of the Dauntless is eight men? A. Yes, sir; eight men.

Q. She has been in Brunswick about a year? A. About one year; yes, sir.

Q. A comparatively new boat? A. Yes, sir.

Q. And you consider her the most powerful boat south of Hatteras? A. On the Atlantic coast.

Q. Have you given the dimensions of the boat; give her dimensions, if you know them? A. I don't know her dimensions, exactly. She is 110 feet long; her breadth, beam and depth I do not know, for certain; I have heard it, but I do not remember.

Q. During these years that you have lived in Brunswick, how many salvage operations has she engaged in? A. No other, that I remember, sir; no salvage cases.

Q. This is the first salvage experience she has had? A. As far as I know, sir.

Q. The weather out to Bahama was good, I understand? A. Yes, sir, fine weather.

Q. You found the Clandeboye lying easy when you got there? A. Yes, sir.

Q. How many anchors were out? A. One.

Q. Did you see her other anchors? A. I saw her other bower anchors.

Q. You did not see any other anchors, stream or kedge? A. I did not notice them.

Q. The other bower wasn't down? A. No, sir.

Q. How was it, in respect to being ready to drop? A. It was ready to let go; hanging to the hawse pipe.

Q. It was one of the patent anchors, I suppose? A. Yes, sir.

Q. And so was the port anchor, that was used? A. Yes, sir.

Q. That ship had been lying there ten days, with only one anchor down, and on the bottom that you have described as being not a holding ground for anchors. How can you account for her not having changed her position? A. Well, sir, if the weather had been the same, all the time, as we found it when we got there, just the sweep of the ninety fathoms of chain would have held her; but how the weather had been, previous to that, I do not know, of course.

Q. How, if the weather had been with several severe squalls? A. An ordinary squall would not affect it much, with that much chain out; a squall of short duration. It is

the sea that affects these vessels; not the wind, so much; they have no spars to speak of.

Q. The wind, generally, has an effect on the sea, though? A. Yes, sir.

Q. A squall of ordinary duration, in that position, would cause some sea? A. Yes, sir, it would, as long as the squall lasted; as soon as it was over it would drop.

Q. And during that time do you think the vessel would have strained her anchors? A. No, sir, not much in an ordinary squall.

Q. When did you first have news of the Clandeboye being off the Bahama banks, and how? A. It was about noon, or the afternoon; I don't remember the time of it; it was some time during the day of the 17th of May, and Captain Lomm came to me and engaged me to go.

Q. And what time did you leave? A. We got away a little before nine o'clock, I think, sir; between half-past eight and nine.

Q. On the 17th of May? A. Yes, sir.

Q. So it was the 17th of May, and not the 16th, you left? A. On the 17th.

Q. And when did you arrive? A. We arrived at the Bahama banks on the 19th.

Q. The Captain came to you, and what statement did he make, as to your employment, and the reason therefor? A. I didn't just understand the question.

Q. You said the Captain came to you on the 17th of May? A. The Captain of the tug boat. He told me there was a steamer disabled and anchored on the Bahama banks, and that he was coaling up the boat to go to her, and asked me if I would go, as navigator.

Q. Was that all the conversation that passed between Captain Lomm and yourself? A. Yes, sir; I didn't see him again until we left.

Q. Had you no information that other tugs had been employed to go? A. No, sir; I knew nothing about it.

Q. You found no difficulty in the towing except Saturday night and the afternoon of the following day? A. Yes, sir.

Q. With that exception, the weather was very fine? A. Yes, sir; fine weather.

Q. When did you, yourself, first learn that another tug had been employed to go to the Clandeboye? A. When we returned to Brunswick, with the ship.

Q. That is the first news you had had? A. Yes, sir.

D. H. DEVERAUX, on behalf of the libellant, sworn.

Examined by MR. ROBERT HUGHES:

Q. What is your occupation and residence? A. Marine engineer, and my residence is Brunswick.

Q. How old are you? A. Thirty-three.

Q. What experience have you had as a marine engineer? A. Have had seven years as engineer, and four years in the shop.

Q. Well, on what boats have you been engineer? A. On the tug Frank and the tug Inca and the tug Dauntless.

Q. Tell us about the Dauntless; what kind of a boat she is, and what is her power, and size, and everything in reference to the boat? A. Her length, depth and dimensions?

Q. Yes? A. She is 110 feet, over all; 11½ feet deep; 20.9 wide; she is built of steel.

Q. New or old? A. New.

Q. How new? A. She was built in May, a year ago; the 28th of May.

Q. How about her power? A. You want the size of the engine, or the indicated horse-power?

Q. Both. A. The size of the engine is 17x32 diameter, with 24-inch stroke; indicating about 330 horse-power.

Q. Are you familiar with the tug boats along the south Atlantic coast, at all? A. I am, sir.

Q. What would you put the Dauntless in comparison with; any other tugs you know of along the southern Atlantic coast? A. As far as my knowledge is concerned, she is the best south of this port, until you get to the Gulf.

Q. What is her daily coal consumption? A. She will average, on ordinary work, about eight tons, but on heavy towing and stormy weather she will go ten to twelve.

Q. How much coal does she carry in her bunkers? A. Fifty tons.

Q. Can she carry any besides what she carries in her bunkers? A. Yes, sir, she can carry it on deck.

Q. Do you remember the service she rendered to the Clandeboye. Were you along on that trip? A. I was.

Q. How much coal did you take on to start on that trip? A. She took in thirty-four tons in her bunkers and eight tons on deck, and had about fifteen tons, before that, in the bunkers.

Q. That made fifty-seven tons, in all? A. About that; yes, sir.

Q. Was that as much as she could carry? A. No, sir, we can carry at least seventy-five tons, taking more on deck.

Q. Why didn't you take the full seventy-five tons? A. We were in a hurry to get away as soon as possible, and didn't suppose we would need any more right then. We could get along all right with that amount of coal.

Q. Were you chief engineer on that trip? A. I was, sir.

Q. When you got to the Clandeboye did you know whether the Captain of the Clandeboye sent the engineer aboard to examine the engines? A. The engineer was aboard, and asked me all concerning it, and examined and looked her over.

Q. Did he express himself, as to her power? A. He didn't express it to me, but the Captain told me he was perfectly satisfied.

Q. You mean the Captain of the Clandeboye? A. Yes, sir, he remarked to me that he was satisfied she was all right, and asked my opinion, and I said that I thought so too.

Q. Did you notice when the anchor came up; or do you know anything about anchors? A. Yes, sir, I was in a sailing vessel two years; but didn't go on the steamer, at all, except amidships, talking to the engineer.

Q. You started, with her in tow? A. Yes, sir.

Q. Tell us about the weather, as far as you observed it? A. When we took her in tow, about one o'clock Saturday, the weather was fine, the sea was smooth; but that night, about as I came off watch, at twelve o'clock, the wind had changed, and at two o'clock I was thrown off the settee by the boat's rolling. I was asleep, in the engineer's room, and the assistant engineer was standing at the throttle, to shut her off when the wheel came out of water; and from that time to ten o'clock the next morning one of us was by the throttle all the time.

Q. You had to stand there on account of the way the propeller raced? A. Yes, sir, to keep from breaking the blades off and breaking the shaft.

Q. For what purpose did you stand by the throttle? A. When the propeller came out of water, in order to close the throttle down, which made the propeller turn over easier, and eased the ship, and when it went down in the water we opened it.

Q. In other words, you had to do that because you could not regulate that by the bells? A. Yes, sir.

Q. Well, you came to Brunswick? A. Yes, sir.

Q. Did you coal up there? A. Yes, sir.

Q. From Brunswick to Newport News, how did you come? A. We came along very nicely; we had very good weather, except Wednesday night, I think. We left Tuesday night, and Wednesday night, about nine o'clock, a thunder squall came up, and lasted about two hours, with very heavy lightning, and thunder and rain.

Q. That didn't affect your towage, at all, though? A. No, it didn't affect the towage, at all.

Q. Did you hear the Captain of the Clandeboye, while you were there, before you started, say anything as to whether the wreckers could have gotten his vessel in the reefs? A. I heard him say; I don't quite remember whether it was there or after we got to Newport News; that they wanted to tow him, and that the only reason why they wanted to tow him, in his opinion, was they wanted to get his anchors off the bottom and get him ashore and wreck him.

Q. Speaking of the Bahama wreckers? A. Yes, sir, I think it was after we got to Newport News; I am quite certain it was not out there.

CROSS EXAMINATION.

By Mr. Floyd Hughes:

Q. What kind of a tug was the Frank and the Inca? A. The Inca is an iron boat, compound engines, somewhat smaller than the Dauntless, and the Frank is a single-engine boat, a small boat, about sixty feet long.

Q. They are port and river tugs, I suppose? A. The Inca is a sea tug; she is a towing and wrecking steamer.

Q. Did you have any wrecking experience in the Inca? A. Yes, sir.

Q. How many expeditions? A. I was either on one or two, outside.

Q. How far out of Brunswick? A. About forty miles, on the coast.

Q. As I understand, this is the first salvage operation of the Dauntless since she was built? A. Yes, sir.

Q. Consequently this is the first service she has ever been on at sea? A. Yes, sir.

Q. As I understand, no complaint is made of the weather, from the time you left Bahama until you got to Newport News, except the Saturday night and Sunday after starting? A. Sunday, up to ten o'clock, and then it moderated, and then breezed up about two o'clock in the afternoon, and moderated about midnight.

Q. What time did you say you were waked up by the rolling of the tug? A. About two o'clock Sunday morning.

Q. And, for a period of eight hours, either you or your second engineer stood by the throttle? A. Yes, sir.

Q. The statement you made, about the Captain of the Clandeboye, with reference to the wreckers, was in reference to the pilot and men on board his vessel, was it? A. No, sir.

Q. It was the wreckers who were around his vessel in their boats? What was the first intimation you had of the Clandeboye being off the Bahamas? A. The first I knew of it was Wednesday—Thursday morning, the 19th, of May, I think. I saw it in the Savannah paper, when it was handed me by the Captain of the boat.

Q. That was the 17th; Saturday was the 19th? A. I don't remember the date, but it was Thursday.

Q. Thursday morning the Captain handed you one of the Savannah papers. Do you know what paper it was? A. The Savannah News, I think. I heard about it the day before, but did not see the account in the papers that mentioned it.

Q. The Dauntless had just gotten in the night before, and you heard of it, as a sort of rumor, and saw the statement in the papers the next morning, when the Captain handed you the paper? A. Yes, sir.

Q. That was on Thursday morning? A. Yes, sir.

Q. And it was that morning's paper? A. I could not say; that morning or the morning before; I didn't look at the date—I just read the account.

Q. About what time of the day was it when you saw the Captain and read that paper? A. Some time in the forenoon; I don't know, exactly.

Q. What was done by him and yourself, about starting? A. About one o'clock that day we started to find out if they had sent any boats from Savannah, at that time, and up to that time they didn't know anything, and we concluded to go, anyway. About half-past one we went to the coal dock, and started putting in coal, and we put in coal from that time until we left.

Q. You didn't loose any time getting the coal aboard, I imagine? A. No, sir; we got it aboard as soon as we could.

Q. And left before you got a full deck load, having eight tons on deck? A. Yes, sir.

Q. Didn't you know, at that time, that the owners of the Clandeboye, through their agents, had chartered another tug to go to the Clandeboye? A. We knew nothing definite. Didn't hear any communications. We heard it rumored they were trying to get a steamer.

Q. You didn't know anything definite? A. No, sir.

Q. Your news was the news you got out of the paper handed you by the Captain? A. I knew they were trying to find out from Savannah if they had sent a tug from Savannah, but didn't see any dispatch or other than that; just heard it rumored.

Q. I mean, in the newspaper handed you by the Captain. Was any statement made that a contract had been made by the owners with another tug? A. Nothing, that I remember of, about a contract.

Q. So that yourself, when you left, had no definite knowledge that such a contract had been entered into by the owners with another tug, for assistance? A. I didn't see any telegram or anything, or hear anything definite; just heard the rumor that they were trying to make a contract; but whether they did or not, I couldn't swear to that.

Q. I hand you the Savannah Morning News, Friday, May

17th, with an article marked, relating to the steamship Clandeboye. Look at that, and see if that is the paper and that the article shown you by the Captain?

(The article referred to is in the second column, on the eighth page, headed, "In a Dangerous Position," and the paper is filed, marked "Exhibit B.")

A. This is the same item, as near as I can judge, that I saw in this paper on this date. I did not look at the date at the time.

LEO LOMM, the libellant, sworn.

Examined by MR. ROBERT HUGHES:

Q. State your name, age, residence and occupation. A. Leo Lomm; 38 years old; live in Brunswick, Ga.; master of the tug Dauntless.

Q. What has been your experience, as a seafaring man? A. I followed the sea for twenty-three years; sixteen years in steamers and tug boats, and seven years in sailing vessels.

Q. You now command the tug Dauntless? Tell us about the Dauntless; what kind of a tug is she? A. A first-class steel tug, a little over a year old now.

Q. How does she compare with any other tug you know of on the southern Atlantic coast? A. She is the best south of here, until you get to the Gulf coast.

Q. You say she is the best—in what respect; in power? A. In power and speed, and also in seaworthiness.

Q. How did you first hear that the steamship Clandeboye was in need of assistance? A. On the 16th of May, when I came in from sea, I saw a telegram about the mate of the Clandeboye had arrived in Savannah and needed assistance, and the next day, of course, I thought the Savannah tugs had gone for the ship. But the next day, about noon, someone said, "why don't you go to the assistance of the steamer?" and I said, why, the Savannah tugs have gone, long ago. I said so, and a gentleman with me, by the name of E. H. Mason, says, "no, they aint gone;" and showed me the Savannah News, of the morning of the 17th.

Q. Is this a copy of the Morning News that he showed

you? (Referring to the paper already filed.) A. Yes, sir; that is the date, and I read that, and as soon as I read that I went right down to the tug and started to fill her up with coal.

Q. You went, then, on the strength of the item you saw in the Savannah Morning News of the 17th; the paper I have just shown you? A. Yes, sir.

Q. You stated you at once went to coal your boat up? A. Yes, sir.

Q. How much coal did you take on? A. We had about fifty-seven to fifty-eight tons aboard the tug; the bunkers hold fifty tons and we had eight tons on the deck.

Q. Why didn't you take more; the deck could hold more? A. We never had so much coal on the tug, and it aint customary to carry coal for a deck load; and I wasn't acquainted with the boat as well as I am now.

Q. And you started with fifty-eight tons of coal? A. Yes, sir.

Q. I now hand you the log of the tug. Who kept that log? Whose handwriting is that log in? A. It is mine; I wrote every word.

Q. Does your tug keep an engineer's log? A. No, sir.

Q. That is the only log kept on the tug? A. Yes.

Q. And written by you, and all in your handwriting? A. My own handwriting.

Q. Are the statements contained in it, as to this voyage, correct, as far as you know? A. Yes, sir; all of it, from beginning to end.

(NOTE.—A copy of the entries in the said log, from May 17th to 31st, inclusive, is herewith filed, marked "Exhibit X.")

Q. Now, you arrived at the steamship Clandeboye; did you then see her master? A. Yes, sir.

Q. Relate the conversation that occurred between you and him? A. When I got aboard the steamship—I and Captain Curtis—we were met by the Captain, who says, "come down below," meaning in the cabin, of course; and, as we were going along the deck, the Captain says, "did you hear anything of my mate and boat?" and I said, yes, sir; he is in

Savannah; and the Captain turned round and told the men the mate is all right; "the mate and boat is all right," he said, "tell that to the balance of the crew of the ship." We went down below, in the cabin, and, after we got down there, the Captain said, "you say the mate is in Savannah?" and I said, yes, sir. He says, "did the mate send you?" and I said, no, sir; he said, "what brought you here?" I told him I had seen, in the Savannah Morning News, where his mate and boat had arrived in Savannah and wanted assistance; that the ship was disabled, and that she was on Bahama banks, and then he said, "you came on a spec.?" Then I said, yes, sir. So he told me he was offered assistance yesterday, and I said, by a steamer? and he said, "no, sir; these schooners round here came here yesterday, and wanted me to get up my anchor, and said they would tow me in, but I knew they wanted nothing else but to get my anchor off the bottom, and drift ashore, so that they could get a chance to wreck my steamer; but," he says, "I expect a tug in a day or two," as he had engaged a schooner or two to go to Nassau, with a cable, and also to Jacksonville, to get tugs for him. "So," he said, "this is one of the cases, 'first come, first served.'" Then we were talking about where he wanted to go, and he said he wanted to go to Vera Cruz; and I said I could not tow him to Vera Cruz. He wanted to know the reason, and I told him, in the first place I couldn't carry coal enough to carry us to Vera Cruz; then, again, I was not insured anywhere except the Atlantic, and then, again, it was in a foreign port, and a Spanish port besides; and I suggested to tow him to Brunswick or Savannah, and he said he couldn't do anything there, as they had to go in the dry-dock to be repaired. Then I told him Norfolk or Newport News is the best place I know of, and he said, "yes; I know they have got a good dry-dock in Newport News;" and then it was agreed to tow him to Newport News, but that we had to go by way of Brunswick, to get in a supply of fuel for the tug; and after that he said, "well, do you want to make a contract; what are you going to have for doing this work—a written contract?" I told him I wouldn't sign no written contract, because the insurance agent would look upon it I had taken advantage of you, finding you in a disabled condi-

tion. So he pulled out some papers—he had rules from his owners—and commenced to read them, but of course I couldn't remember, exactly, how they read, but the substance was, he should never allow a steamer to take hold of him without he had a written contract; and, in the event they should fail to have a written contract, he could agree to leave it to arbitration. As soon as he got that far, I said, that will do, Captain; that will suit me better than anything else. As soon as we get to Newport News, you pick out a man and I will pick out a man, and they pick out a third party, and let them agree to what I am to have for that service. So that was agreed on. That was about all that was said, and we commenced to get the anchor up.

Q. Do you know whether the master sent anybody aboard, to see if your tug had power to perform the service? A. Yes, sir, he said he had sent his chief engineer aboard, to see if she was able to perform the service, and he pronounced her able to perform the service.

Q. What time did you start? A. If I am not mistaken, the log says half-past five, when we started ahead.

Q. What kind of weather did you have? A. Nice weather, when we started; smooth as could be; a light south-easterly wind; and by eleven o'clock that night the wind changed to north-north-east, and breezed up to a gale, and backed round to the north-north-west.

Q. What affect did that have on the labor of the tow boat? A. The heavy wind raised up a heavy sea, and of course, we was jumping round there, and wasn't making any headway, and at times going astern.

Q. How did that sea affect your tug boat; did your propeller race at all? A. Yes, sir, the engineer had to stand by the throttle and watch her from wringing the shaft off when she kept pitching in the heavy sea and throwing her stern out. The engines turned over so much faster, and they tried to prevent her wringing her shaft off.

Q. Suppose the hawser had broken, what danger would your tug have been in? A. Been liable to get the hawser in the wheel.

Q. Might have fouled the wheel? A. Might have fouled the propeller and prevented us turning at all.

Q. Well, suppose your coal had given out; suppose the weather had lasted long enough for the coal to have given out, what danger would you have been in then? A. Been in a pretty bad fix here. A steamboat without fuel and without any sails.

Q. Could you have gotten coal from him? A. Not in that kind of weather, no, sir; in moderate weather we could.

Q. Well, then, after that you came along all right to Brunswick, did you? A. Yes, sir, from Sunday night; it commenced to moderate late Sunday night, and moderated all along until we got to Brunswick.

Q. Did you coal up at Brunswick? A. Yes, sir, and went right back to the ship and started for Newport News.

Q. How about the trip from Brunswick to Newport News? A. Had lovely weather and smooth sea, all along, except one night, we had some squally weather, a rain squall, but did not affect us, as it was a fair wind and rained so hard that we had no sea.

Q. Did you notice the sails of the Clandeboye? A. Yes, sir.

Q. What kind of sails did she have, what amount of canvas, do you suppose? A. I considered them very poor and very few.

Q. Would they have been enough for her to have navigated without her propeller? A. No, sir.

Q. Did you notice his anchor, as you started? A. Not the anchor, no, sir.

Q. You noticed them hauling up the anchor? A. Heaving on the chains, yes, sir.

Q. You noticed that? A. Yes, sir, I was on the forecastle head.

Q. What did you go to see about that? A. I was forward, on the forecastle head, when they were heaving on the chains, and the Captain called my attention and said, "see how my chain is chafed up;" and that is the first I noticed of it. It was right bright where it was dragging on the rocks.

Q. You could see it was bright? A. Yes, sir.

Q. Did you notice any signs of coral on it? A. No, sir, I never paid any attention to it; I just cast my eyes on it and saw it was bright where it had been chafing the rocks.

Q. Did you notice how it came up, whether it and the anchor came up easy or not? A. Yes, sir, it came up very easy. They didn't know when the anchor left the bottom, because they had about thirty fathoms of water and expected to have quite a job to drag the anchor from the bottom, and as they started and looked, the chain looked like it laid right up and down all along. The chain laid the same way before they started to heave in, and as they hove in the chain kept right up and down, and they expected to have trouble to drag the chain from the bottom; and somebody says the thirty fathoms is in the locker now.

Q. So they started the anchor without knowing it? A. Nobody knew it.

Q. Did that indicate whether the anchor was holding tight or not? A. It indicated it had no hold at all.

CROSS EXAMINATION.

By Mr. Mynderse:

Q. Where had you been when you came into Brunswick that night—May 16th? A. I had been to sea.

Q. What time did you get there? A. I really don't remember what time it was; it was about five or six o'clock, as near as I can remember.

Q. Who told you about the Clandeboye, then; do you remember? A. I believe it was Mr. Coney, of Coney & Parker.

Q. They are your agents in Brunswick. A. Yes, sir.

Q. Did they show you the Savannah News, of May 16th? A. Yes sir.

(The counsel here hands the witness the Savannah Morning News, May 16th, with the article therein referred to, and the same is herewith filed, and marked "Exhibit C.")

Q. As I understand matters, you surmised that assistance had already gone out? A. Yes, sir.

Q. So you didn't consider the subject of going out until about noon of May 17th. A. Yes, sir, that the Savannah tugs had already gone out.

Q. Now, on May 17th, you had a talk with Mr. Mason, about noon? A. Yes, sir.

Q. That was in Mr. Mason's store? A. Yes, sir.

Q. And he suggested that you should go? A. No, sir, he showed me the paper; I was talking with someone else; it was someone else, I could not swear who it was, said, "why don't you go and get that steamer?" and I said, Savannah tugs must have gone, long ago, and Mr. Mason said, "no, they have not gone, this morning." He read me the Savannah News, of the 17th.

Q. And he told you that it was clear that they had not gone, up to the time of the paper going to press? A. Yes, sir, I read the paper myself, and as soon as I read it I went right down to coal up.

Q. Did you have any talk, with Mr. Mason, about the expense of the expedition? A. No, sir.

Q. Didn't you tell him it would cost $200, and you wouldn't get anything? A. I would not swear to that, at all.

Q. And didn't he say that even if you didn't get the Clandeboye, you might get something else, and you couldn't expect to get anything unless you risked something? A. I believe he said something like that, since you call my attention to it.

By the COURT:

Q. Who is Mr. Mason? A. He is a ship chandler, in Brunswick.

By MR. MYNDERSE:

Q. After seeing Mr. Mason, did you have any talk with Coney & Parker? A. Yes, sir.

Q. About going out? A. About going out, yes, sir; and they thought it would be too late.

Q. They were afraid it was too late? A. Yes, sir, and I told them what I had seen in the Savannah Morning News.

Q. Then they telegraphed to Mr. Coney, in Savannah? A. I believe Mr. Coney telegraphed to his brother, in Savannah, asking if the tugs had left, and he got a reply from his brother.

Q. His brother's name is Walter Coney? A. I believe that is his name.

Q. Have you that dispatch with you? A. I believe I have a copy of it.

(A copy of said telegram is herewith filed, marked "Exhibit D.")

Q. What time did this dispatch get to Brunswick, do you know? A. I really don't know what time it was, because I was busy trying to get the boat coaled up and getting supplies aboard.

Q. It says 3.17 p. m.; and you saw it that afternoon? A. Yes, sir.

Q. Mr. E. F. Coney was one of the firm of Coney & Parker, agents of the tug boat? A. Yes, sir.

Q. Does he own an interest in the tug? A. Yes, sir, the firm does.

Q. Do you own an interest? A. No, sir, I own an interest indirectly, not directly.

Q. How is it that you own it indirectly? A. Well, I own an interest in the tug Inca, and the tug Inca owns a certain interest in the tug Dauntless.

Q. What time did you get away from Brunswick that night? A. I believe it was 8.45; the log says I left the dock at 8.45 p. m., standard time.

Q. Did you have any further information, respecting the services that the owners of the Clandeboye had engaged, except what you got from the newspaper, and what you got from this telegram? A. No, sir.

Q. You thought you could get out there before the Morse did, you starting from Brunswick and she starting from New York? A. I didn't know where she was starting from. I thought I could go there, and if I could get there before anybody else, that I could make some money out of them.

Q. Give me the hour that you arrived alongside of the Clandeboye? A. We arrived alongside of the Clandeboye at 10.45 a. m., standard time.

Q. How long were you aboard before you and the master made this agreement to go to Newport News and to arbitrate the payment? A. I do not think I had been aboard fifteen or twenty minutes.

Q. You stated all the conversation that passed between you

and him? A. Yes, sir, except that we was talking around the forecastle when they were heaving in the anchor.

Q. Everything that was material you have stated? A. Everything material, yes, sir.

Q. What was the height of the Dauntless' deck above water, as she was loaded when she took the Clandeboye in tow? A. That I really could not tell, I should think it was about two feet and a half.

Q. Is that amidships? A. About the lowest part of the deck; she is highest forward.

Q. I mean that is the free board at the lowest point? A. About two or two-and-a-half feet, I guess; I could not really tell you; never measured.

Q. How high was the stern of the Dauntless above water? A. I couldn't really tell you; I didn't measure it.

Q. Can you tell about how high? A. No, sir.

Q. How far was the Clandeboye out of water, at her bow? A. I could not tell you.

Q. She was, of course, higher than the tug? A. Of course, very much higher, but by her marks she drawed nearly twenty-one feet, aft.

Q. The Clandeboye did? A. Yes, sir, but how high she was, I could not tell.

Q. Did you know what cargo the Clandeboye had? A. At the time I did not know what she had, but she had paint and machinery, and general cargo.

Q. And coal? A. And fuel, of course. I thought she had paint.

Q. The towage was performed with the tug's hawser? A. Yes, sir, the hawser was connected to the ship's anchor chain; her hawser was 125 fathoms long.

Q. Was the hawser made fast before or after the anchor was taken up? A. Before.

Q. You were on board the Clandeboye; where were you at the time the anchor was taken up? A. When the anchor was taken off the bottom, I was on board the Clandeboye.

Q. How soon after that did your tug start? A. I should think four or five minutes, something like that; when we seen

the vessel was starting to swing, we went right aboard the tug and went right ahead.

Q. When you returned to Brunswick, for coal, how long were you there? A. We anchored the steamer about half-past nine, I believe; arrived off the bar 9:30 a. m., and anchored the ship on the 22nd; run to the city and filled the tug with coal.

Q. How long were you in Brunswick when you went up there to get coal? A. We was in Brunswick about four hours, may be a little more, I could not say exactly, because I did not notice how long it took us to run up and how long to run back. I only entered when we got to the bar and also when we started to tow the steamer.

Q. And were the people in Brunswick rather surprised to find you had been out to get the Clandeboye? A. No, sir, they seemed to be delighted to know I had gotten her.

Q. There are not many who knew you went out? A. I do not think there was anybody in town except that knew it.

Q. I mean, prior to May 22nd, there were very few that knew it, were there not? A. I don't think so, I don't think there was anybody in Brunswick except that knew it.

Q. Did you have an interview with the reporter on that day? A. On the 22nd.

Q. Yes? A. Yes, sir.

Q. Will you look at that article; have you seen it before? (Counsel here hands the witness newspaper.) A. I don't think I have, sir.

Q. Look it over and see if it is correct? A. This looks very much like the Brunswick paper, because anything you see in the Brunswick paper you can always count on its not being like what you read it in the paper.

Q. What is in this that ain't correct? A. That we left quietly; I have not read it all, because if——

Q. Is it not true, as stated here? I quote "that the departure of the Dauntless was not published, for private reasons, and very few, even in Brunswick, knew that she was going. The Savannah and New York papers were not made aware of it." A. That I could not tell, because I did not see a reporter when I left, but everybody I met on the street, when I was getting in readiness to go, I told them, yes,

Where are you going, and how long are you going to be gone, and that. I knew very few except that knew it. It is a very little place, and any rumor will spread very fast; I know I blew the whistle when I left.

RE-DIRECT EXAMINATION.

By MR. ROBERT HUGHES:

Q. At this conversation, between you and the Captain of the Clandeboye, you did tell him that his mate had arrived in Savannah; didn't you? A. Yes, sir.

Q. You did answer every question that he asked you; didn't you? A. Yes, sir, to my best knowledge.

Q. He did tell you he was expecting tug boats in a day or two, and that it was a case of first come, first served. A. Yes, sir.

Q. And you answered every question that he asked you, and would have answered any other questions that he asked you; would you not? A. Yes, sir.

By MR. MYNDERSE:

Q. He was expecting tug boats from Nassau and Jacksonville? A. I would not be sure whether it was Pensacola, Mobile or Jacksonville.

Q. Those were the boats he was looking for? A. I suppose so, because he had engaged vessels to go to Nassau, with cables.

Q. And if he asked you whether you knew that Minis & Co. had engaged a tug to come out to him, you would have been frank enough to tell him, if he had asked you the question? A. I would, sir.

"EXHIBIT B."

IN A DANGEROUS POSITION.

Anxiety for the Disabled Steamship Clandeboye.

No arrangements have, as yet, been made to send tugs to the assistance of the British steamship Clandeboye, which is anchored off Bahama Island, with a broken shaft, an account of which was published in yesterday's Morning News.

J. F. Minis & Co., agents for the steamship, have received estimates for sending tugs to her assistance from all the tow boat companies along the coast, and have submitted the prices to Carlisle & Co., the Clandeboye's owners, at London. Up to late last night, no answer had been received, but it is expected that instructions will be here this morning.

Mr. Hay, mate of the Clandeboye, who arrived here Tuesday, in an open boat from the steamship, said yesterday that he was very anxious to get away to his ship, and could not understand why the owners were delaying in giving instructions to send her assistance. He says the ship might as well be on top of the Rocky mountains, and expect another vessel to pass her by chance, as to suppose that another steamer will loom up near the point where she is anchored. She is out of the track of all traders, being on the north-east coast of the Little Bahama, with coral reefs and rocks behind her, and the ocean beating against her bow. A sudden gale or hurricane, both of which are frequent in that locality, might come with such force as to cause her to part her chains, and wreck her on the rocks.

Mr. Hay said that yesterday was the longest day he had ever spent, because he had nothing to do but sit and wait for the cable that never came. His experience in the open boat at sea did not equal the suspense.

"EXHIBIT C."

IN AN OPEN BOAT AT SEA.

FIVE DAYS AND NIGHTS IN SEARCH OF AID FOR A DISABLED SHIP.

The Steamer Clandeboye Lying off the Little Bahama Island at the Mercy of the Waves—The Mate and Three of the Crew Start in a Life Boat for Assistance, and Row and Sail 450 Miles before They Find It—A Tug to be Sent to the Disabled Vessel.

The British steamer Clandeboye, Capt. Strickland, bound from Cardiff to Vera Cruz, with a cargo of paint, fuel and machinery, is lying on the north-east coast of Little Bahama Island, about one and a half miles from land, in twenty-eight fathoms of water, in a disabled condition.

Her tail-end-shaft broke April 22, while 170 miles north-east of Abaco light. She drifted around the ocean in the various currents until last Wednesday, when she came to anchor off Bahama.

Chief Mate H. T. Hay and three men left the ship Thursday morning, in an open boat, to search for assistance. They

arrived at Tybee at 6 o'clock yesterday morning, after having been five days and nights on the ocean without having spoken a passing steamer.

PICKED UP BY THE CYNTHIA.

They were taken on board the Propeller Towboat Company's tug Cynthia, and brought to the city, where they arrived at 8 o'clock and reported to J. F. Minis & Co., ship brokers. Carlisle & Co., of London, the owners of the steamship Clandeboye, were immediately cabled the circumstances of the accident. They instructed Minis & Co. to engage a tug boat to go to her assistance. The steamship will have to be towed to some port to be discharged, before a new shaft can be placed in her, as the broken part is too deep in water at the stern of the vessel, to be repaired.

It was not decided yesterday whether the vessel will be towed to this port or to her destination. It is very probable that a tug boat will be secured here to go to her assistance.

The names of the four men who arrived here from the disabled steamship are H. T. Hay, chief mate; William Hossack, carpenter; Thomas Donnelly and H. Halsing, seamen. They were pretty well fatigued after their adventure of five days on the ocean in an open boat and were glad to find a harbor.

FIVE DAYS AT SEA.

The mate tells an interesting story of the accident to the steamship, and the incidents connected with the adventure of the men, in the small boat, on the trip from Bahama here.

"We left Cardiff April 1," he said, "with a cargo consisting of paint, fuel, and machinery, for Vera Cruz, and were about 170 miles northeast of Abaco lighthouse, April 22, when the accident occurred. There is no way to account for the break-down, as nothing unusual had happened to warn us of any disarrangement in the machinery, and the weather was bright and fair. It came all of a sudden, and we were soon drifting at the mercy of the sea, with the tail-end of the shaft broken, between the propeller and where it enters the ship. We could not get at it to make repairs, so we drifted around in hopes of sighting some passing steamer and signaling her for assistance.

DRIFTING WITH THE CURRENTS.

"The trade winds and ocean currents carried us in every direction. One day we drifted fifty-four miles; another day, forty miles, and so on. I have some curious accounts to give to the Hydrographic Bureau, of the currents in that vicinity, when I make my report to the office.

"We finally sighted land last Wednesday, and dropped anchor about a mile-and-a-half on the north-east coast of the Little Bahama. It was decided that a boat be sent out into Florida Straits, to seek assistance from some passing steamer. A lifeboat was lowered and manned my myself and three other men. We were provided with plenty of provisions and water and did not suffer for the want of something to eat and drink, although we took our meals under difficulties during our long and tedious trip.

TO BE GONE A FEW HOURS.

"We left the ship at five o'clock last Thursday morning," said Mate Hay, "and expected to return with assistance in a few hours. We were disappointed, however, and night came on without anything in sight. All that night we drifted about with no better success. The next day we were struck by frequent squalls, in one of which the mast-step was torn away. We succeeded in repairing it, however, and the balance of the trip was devoid of accident. It rained neatly all of the time, and kept us busy bailing the boat. We had considerable difficulty in keeping our provisions dry, and preventing salt water from getting in the cask, as the waves frequently broke over us.

"The first vessel we sighted was a Norwegian bark, bound south. We signalled her, but she paid no attention to us. We still expected that some steamer would come in sight, but we were disappointed until Saturday night, when we saw the lights of a side-wheel steamer bearing down upon us.

"We attempted to make a light, and with some difficulty we finally got one lantern lit, but the steamer went by, although we were close under her bow. I suppose we were near the coast of Florida, and the steamer's skipper thought we were boys out on a fishing frolic.

"We had lost our bearings by this time and could not have found our way back to our steamer if we wanted to, so we kept steering for the western shore. The wind was blowing from the south-east and carried us at a brisk rate toward the Georgia coast. Fortunately, we spoke the schooner Raymond T. Maull, from New York, bound to Brunswick, or Tybee, on Monday, and from her we got our bearings and made for the inlet. We arrived inside Tybee bar this morning at six o'clock, where we found the tug Cynthia, which we boarded and were brought to the city.

FATIGUED FROM EXPOSURE.

"We were stiff and sore from our long exposure to the weather, and the cramped position in which we were placed in the small boat for five days and nights, and when we got

on the tug boat, we were so fatigued that we could not stand upon her deck. We are getting in shape again, having dried our clothes, which had been soaking since last Thursday, and we feel quite comfortable now."

Those on the ship have no knowledge of the whereabouts of their companions, who left them expecting to return in a few hours, but who instead sailed 450 miles before they were able to communicate with any one.

"EXHIBIT D."

"Savannah, 3:17 p. m., May 17, 1894.

E. F. Coney, Brunswick, Ga.

Tug Morse of New York chartered go to assistance Clandeboye Walter Coney."

"EXHIBIT X."

Log-Book For Tug Dauntless.

Thursday, May 17th, 1894.

Received 34½ tons coal, had 8 tons on deck, left the dock 8:45 p. m., for Bahama banks. Passed St. Simons Sea Buoy 10 p. m. Wind south; moderate all day and night.

Friday, May 18th, 1894.

At sea, all day, on the way to Bahama banks. Passed Cape Canaver, 2:35 p. m. Wind south-east; moderate; run across Gulf Stream. Fine weather, and sea very smooth.

Saturday, May 19th, 1894.

At sea, in Gulf Stream. Run dead slow from 2:30 a. m. to daylight. At 5:30 a. m. sighted the bottom of Little Bahama bank, run along the bank, on north side of Little Bahama bank. Got alongside of the s. s. Clandeboye 10:45 a. m., which was anchored off Stranger's Cay Channel Breakers, in 30 fathoms of water and rocky bottom, about 1½ to 2 miles to northward of the Breakers. Made agreement with Captain of s. s. Clandeboye to tow the ship to Newport News, Va., and the value of service rendered to be left to arbitration; but we had to go to Brunswick, Ga., to get a supply of coal and the assistance of tug Inca, which was agreed on. Connected our hawser to the anchor chain on the starboard bow of the Clandeboye. Started from Bahama bank, with Clandeboye in tow, at 1:05 p. m. Wind south-west, very light, and the sea being smooth, made five knots per hour, to 11 p. m., when wind changed from south-west to north-north-east,

and breezed up a fresh breeze, and making up sea very fast, and the breeze increased to a gale by 12 midnight, from north-north-east to north-west.

Sunday, May 20th, 1894.

At sea, towing the s. s. Clandeboye. Wind north-west, blowing a gale, and heavy sea running; making no headway and at times going astern; the sea being so bad the engineer had to stay by the throttle to prevent the racing as much as possible. Wind moderated from 10 a. m. to 2 p. m., when wind changed to west-north-west, blowing a gale, and very bad sea running. Making no headway. Towards midnight the wind commenced to moderate, and the tug held Clandeboye's head to wind.

Monday, May 21st, 1894.

At sea, towing the s. s. Clandeboye. Wind moderating and the sea running down. The tug commenced to make headway, and at 7 a. m. was making about three knots per hour. At 1 p. m. wind changed to south-east by south and at 5 p. m., made 5½ knots per hour, and made good time all night.

Tuesday, May 22d, 1894.

At sea, towing the s. s. Clandeboye. Wind changed to west-north-west. Moderate breeze and smooth. Making good time. Arrived off Brunswick Bar 9:30 a. m. Anchored the ship and run to city and filled the tug with coal, received 57 tons soft and 8 tons hard coal. Returned to ship Clandeboye and commenced to tow at 6:30 p. m. Wind south-south-east in the p. m., fresh breeze, making about 6½ knots per hour.

Wednesday, May 23rd, 1894.

At sea, towing s. s. Clandeboye. At 2 a. m. wind changed to south-west. Moderate breeze all day. At 11 a. m. wind hauled to south-south-east and at 9 p. m. wind hauled to west, with rainy squalls, at intervals, to about midnight. Making good time; about 6½ knots per hour.

Thursday, May 24th, 1894.

At sea, towing the s. s. Clandeboye. Wind west, nice breeze all day and smooth. Making about 6½ knots per hour, all day and all night.

Friday, May 25th, 1894.

At sea, towing the s. s. Clandeboye. Wind west in the

a. m. Off Hatteras 12 noon. At 2 p. m. wind north-east; very light for two hours, then hauled to south-west. Moderate all day, and making good time, the sea being smooth.

Saturday, May 26th, 1894.

At sea, towing s. s. Clandeboye. Sighted Cape Henry Light-House 9 a. m. Wind west in the a. m. Arrived at Hampton Roads about 2 p. m. Had to wait for the doctor for about three hours. After being passed by the doctor, towed Clandeboye to Newport News. Arrived about 7 p. m. Wind north-west to north-north-east in the p. m. Moderate all day; laid alongside the s. s. Clandeboye all night.

Sunday, May 27th, 1894.

Laid alongside of the s. s. Clandeboye all day and night, waiting on a settlement with the Captain of the Clandeboye. Wind from east to south, with rainy squalls in the p. m.

Monday, May 28th, 1894.

Laid alongside the s. s. Clandeboye all day and night, waiting on a settlement with the Captain of the Clandeboye. Wind south-east to about 4:30 p. m.; then changed to north-west, with rainy squalls and fresh breeze.

Tuesday, May 29th, 1894.

Laid alongside the s. s. Clandeboye all day and night. Wind west in the a. m. and south-south-east in the p. m. with rainy squalls.

Wednesday, May 30th, 1894.

Laid alongside the s. s. Clandeboye all day and night. Wind north-north-west in the a. m. and south-west in the p. m., with rainy squalls and a fresh breeze blowing. Received answer to a letter from Capt. Strickland. I left for Norfolk 11 a. m., and returned in the evening.

Thursday, May 31st, 1894.

Laid alongside of the s. s. Clandeboye to 6:45 a. m., then run alongside the dock to get coal. Had to wait to 2.30 p. m., before we could get coal. Received 26 tons, 4,000 gallons water. Wind south-west in the a. m. and north-west in the evening, and squally, with rain. Had to libel the ship this day, as no satisfactory settlement could be agreed upon.

OPINION.

Filed Feby. 16, 1895.

THE LIBELLANT is master of the steam tug Dauntless, of Brunswick, Georgia. The tug is new and of steel, with compound engine of 350 horse-power. She was built for towage services and for rendering assistance to vessels in distress upon the high seas. Her value is $30,000. She is 110 feet long and draws 10 feet of water, when without coal.

On the 17th day of May, 1894, her master heard that the large ocean steamship Clandeboye, with a broken shaft, was lying at anchor on the Bahama banks, and that the mate was in Savannah for the purpose of procuring assistance.

The value at risk is, by agreement, assessed at $77,000—ship, cargo and freight money.

The Dauntless was then in Brunswick. On the 17th the master read a statement, in the Savannah Morning News, of that date, that no tug had gone to the Clandeboye.

In the same paper, of the preceding day, there had been published a statement of the accident which had befallen the Clandeboye, and her having drifted to an anchorage on the Bahama banks, and of the danger in which she was. It was as follows:

"The names of the four men who arrived here from the disabled steamship are H. T. Hay, chief mate; William Hossack, carpenter; Thomas Donnelly and H. Halsing, seamen. They were pretty well fatigued, after their adventure of five days on the ocean in an open boat, and were glad to find a harbor.

"FIVE DAYS AT SEA.

"The mate tells an interesting story of the accident to the steamship, and the incidents connected with the adventure of the men in the small boat, on the trip from Bahama here.

"'We left Cardiff April 1,' he said, 'with a cargo consisting of paint, fuel and machinery, for Vera Cruz, and were about 170 miles north-east of Abaco lighthouse, April 22, when the accident occurred. There is no way to account for the breakdown, as nothing unusual had happened to warn us of any disarrangement in the machinery, and the weather was bright and fair. It came all of a sudden, and we were soon drifting at the mercy of the sea, with the tail-end of the shaft broken between the propeller and where it enters

the ship. We could not get at it, to make repairs, so we drifted around, in hopes of sighting some passing steamer and signaling her for assistance.'

"DRIFTING WITH THE CURRENTS.

"'The trade winds and ocean currents carried us in every direction. One day we drifted fifty-four miles; another day, forty miles, and so on. I have some curious accounts to give to the Hydrographic Bureau, of the currents in that vicinity, when I make my report to the office.

"'We finally sighted land last Wednesday, and dropped anchor about a mile-and-a-half on the northeast coast of the Little Bahama. It was decided that a boat be sent out into Florida straits, to seek assistance from some passing steamer. A lifeboat was lowered, and manned by myself and three other men. We were provided with plenty of provisions and water, and did not suffer for the want of something to eat and drink, although we took our meals under difficulties during our long and tedious trip.

"TO BE GONE A FEW HOURS.

"'We left the ship at 5 o'clock last Thursday morning, and expected to return with assistance in a few hours. We were disappointed, however, and night came on without anything in sight. All that night we drifted about with no better success. The next day we were struck by frequent squalls, in one of which the mast-step was torn away. We succeeded in repairing it, however, and the balance of the trip was devoid of accident. It rained nearly all the time, and kept us busy baling the boat. We had considerable difficulty in keeping our provisions dry, and preventing salt water from getting in the cask, as the waves frequently broke over us.

"'The first vessel we sighted was a Norwegian bark, bound south. We signalled her, but she paid no attention to us. We still expected that some steamer would come in sight, but we were disappointed, until Saturday night, when we saw the lights of a side-wheel steamer bearing down on us.

"'We attempted to make a light, and, with some difficulty, we finally got one lantern lit, but the steamer went by, although we were close under her bow. I suppose we were near the coast of Florida, and the steamer's skipper thought we were boys out on a fishing frolic.

"'We had lost our bearings by this time, and could not have found our way back to our steamer if we wanted to, so we kept steering for the western shore. The wind was blowing from the south-east, and carried us at a brisk rate toward

the Georgia coast. Fortunately we spoke the schooner Raymond T. Maull, from New York, bound to Brunswick, or Tybee, on Monday, and from her we got our bearings, and made for the inlet. We arrived inside Tybee bar this morning at 6 o'clock, where we found the tug Cynthia, which we boarded, and were brought to the city.' "

The same newspaper, of the 17th, in a statement already mentioned, had said as follows:

"Mr. Hay, mate of the Clandeboye, who arrived here Tuesday, in an open boat, from the steamship, said yesterday that he was very anxious to get away to his ship, and could not understand why the owners were delaying in giving instructions to send her assistance. He says the ship might as well be on top of the Rocky mountains, and expect another vessel to pass her by chance, as to suppose that another steamer will loom up near the point where she is anchored. She is out of the track of all traders, being on the north-east coast of the Little Bahama, with coral reefs and rocks behind her, and the ocean beating against her bow. A sudden gale or hurricane, both of which are frequent in that locality, might come with such force as to cause her to part her chains, and wreck her on the rocks.

"Mr. Hay said that yesterday was the longest day he had ever spent, because he had nothing to do but sit and wait for the cable that never came. His experience in the open boat, at sea, did not equal the suspense."

Captain Lomm, having read these newspaper statements, and partly on the urgent advice of friends, made up his mind so go to the assistance of the steamship, and took a supply of coal on the Dauntless with that object. Before leaving Brunswick, he went to Coney & Parker, agents of the Dauntless, and informed them of his purpose. Mr. Coney, of the firm, thereupon telegraphed to Savannah to know whether the agents of the Clandeboye had yet engaged assistance for the steamer. He soon got the following reply:

"Savannah, May 17th, 3:17 p. m.

"To E. F. Coney, Brunswick, Ga.

Tug Morse of New York chartered to go to assistance of Clandeboye. Walter Coney."

Despite this telegram, Captain Lomm determined to go to the Clandeboye. The evidence shows that the Morse, which was a tug of the largest class, was then in Philadelphia, and

that she did not reach the place of the Clandeboye until the morning of the 23rd of May. The Dauntless left Brunswick after sundown on the 17th, and reached the anchorage of the Clandeboye at about eleven o'clock, a. m., on the 19th of May. The steamer was anchored in thirty fathoms of water, near Stranger's Cay Channel, within two miles of and nearly north of the shoal at that point, and of the breakers there, on a coral bottom, that seems to have been of more or less mud and rock. The steamer seems to have been held partly by her anchor, but chiefly by the swoop of the very heavy chain cable, ninety fathoms in length, that went down from the vessel. The ship had been there for ten days, during which there had been no weather or sea to force or drag her anchor. But the log states that there was considerable strain on the cable.

The position was a very dangerous one, except in quiet weather, and was far off the track of vessels navigating the ocean, outside. In his conference with Captain Lomm, of the tug, the steamship's master, Strickland, wished to be towed to Vera Cruz, which had been his port of destination; but he was informed that the Dauntless could not carry fuel for so long a voyage, and that the tug's insurance would be forfeited if she proceeded to the Gulf. He proposed to tow the steamship to Savannah or Brunswick, but it was soon agreed that they should proceed to Brunswick for a fresh supply of coal, for the tug, and thence to Newport News, where ample facilities existed for replacing the broken shaft of the Clandeboye. In all their conference Captain Lomm had failed to inform Captain Strickland of the employment of the Morse, by his agents, to come to the help of the steamer. It was ageed, between the two masters, that the value of the services which should be rendered by the Dauntless should be fixed, by arbitration, at Newport News.

These matters having been settled, the steamship was taken in tow on Saturday afternoon of the 19th of May. They reached Tybee, off Brunswick, on the 22nd, where the Dauntless coaled. They then set out for Newport News, and arrived there, without accident, on the afternoon of the 26th of May, just a week after leaving Stranger's Cay. They encountered some bad weather on the trip, attended by rough sea, which often threw the stern of the tug out of the water and caused

racing of the propeller; but such weather prevailed for only a day or two, and produced no accident. The service was entirely successful and meritorious.

Saving one question, to be discussed in the sequel, I think, on the evidence in the case, the compensation and bounty should be an aggregate of $10,000; at least $6,000 of which would have been due for the service merely as towage.

The saved ship was thoroughly disabled and helpless. She was in a position, not only of danger from the sea, which any high wind might produce at any moment, but also from the wreckers, who inhabit those dangerous banks and make a living off of distressed shipping driven upon them. The interest of these wreckers was, not to help, but to let the stranded steamer go to wreck and ruin.

The case, therefore, would be perfectly clear for the reward I have indicated, but for the omission of Captain Lomm to inform Captain Strickland, before taking his ship in tow, that the agents of his ship, in Savannah, had employed the powerful tug Morse, of New York, to repair to Bahama banks, to his relief.

Whether or not the right of Captain Lomm, to a salvage reward, was forfeited by his silence on the subject of the employment of the Morse, in his conferences at the Little Bahama banks, with Captain Strickland, is the question on which this case depends. There is no doubt that Captain Lomm ought to have given this information to Captain Strickland. The question is, whether his obligation to do so was so stringent as to constitute the omission a fraudulent piece of deception.

The testimony shows that, in point of fact, the Morse was in Philadelphia at the time her services were engaged by the Clandeboye's agents, in Savannah. But Captain Lomm did not know this, and the telegram shown him by Coney implied that the Morse was in New York. This fact, however, was of little importance; for practically Philadelphia was as far from the Bahamas, as New York. The latter city was more than a thousand miles, as ships run, from the Stranger's Cay, where the Clandeboye was lying. Brunswick was about a third of that distance off. The Dauntless, which was a very fast boat,

reached the Clandeboye on the morning of the 19th of May, and left there, with the Clandeboye in tow, on the same day.

The Morse did not reach the place where the Clandeboye had been until the morning of the 23rd of May, six days after she had been employed for the service, and four days after the Dauntless had left with her tow; during which heavy winds and seas had prevailed for about two days.

Ten days before the arrival of the Dauntless, at Stranger's Cay inlet, Captain Strickland had sent his mate off to look out for passing ships that might come to his assistance, and, failing to find them, to go to Savannah for the same purpose. The first thing that Captain Lomm told him, when they met, was that the mate had arrived at Savannah and had taken steps to obtain assistance. Captain Strickland knew that within the three days, between the 16th and 19th of May, the mate and the steamer's agents in Savannah had been addressing themselves to that task, and the inference was practically certain that they had actually engaged and provided assistance for him. The information possessed by Captain Lomm that a tug from New York had been engaged was only a designation of the particular vessel engaged. It was no more. As a man of business, Captain Strickland knew that some vessel had been engaged, and that the Morse, whose capacity and character were unknown him, was that vessel, could not affect his decision on the question whether or not to avail himself of the assistance already at hand. Captain Strickland himself testifies on this head, as follows:

"Q. Why did you accept his services; didn't you suppose the mate would send someone? A. I knew he would; but in the meantime the ship was laying there eating her head off.

"Q. Didn't you think it possible that some other tug might come along in the course of a day or two? A. I expected them to come from all quarters, but it was a sort of first come first served.

"Q. What would be the effect after one had come? A. I expect after we had gone the place was flooded with tugs."

He knew that assistance had, by the 19th, been engaged. He believed that he would soon be surrounded by a swarm of vessels offering assistance. He looked upon it as a case of

first come first served. He told Captain Lomm so, and gave him to believe that no matter what vessel had been specifically engaged by his owners' agents in Savannah, he would accept the first one that offered.

I cannot see, therefore, that Captain Lomm's omission to tell him what vessel had been engaged—a vessel, too, that was to steam all the way from New York, a thousand miles off, to the reefs on which he lay, involved a fraudulent deception. I do not see any moral turpitude in Captain Lomm's not volunteering to tell Captain Strickland what particular vessel had been engaged by his agents in Savannah. Positive and actual fraud is necessary to work a forfeiture of the salvage award.

"Where success is finally obtained, no mere mistake or error of judgment in the manner of procuring it, no misconduct, short of that which is willful and may be considered criminal, and that proved beyond a reasonable doubt by the owner's resisting the claim, will work an entire forfeiture of salvage. Mistake or misconduct, other than criminal, which diminishes the value of the property salved, or occasions expenses to the owners, are properly considered in the amount of compensation to be awarded. Willful or crimiual misconduct may work an entire forfeiture of it; but that must be proved by those who dispute it."

Jones, on the Law of Salvage, p. 125.

Other questions in this case are discussed elaborately, in the briefs of the respective counsel. I do not feel it to be necessary for me to review them, or to set out testimony on which they arise. I repeat the opinion that the service performed by the libellant was rendered with spirit and promptitude, was meritorious, and ought to be, not only compensated on the basis of *quantum meruit*, but rewarded by a bounty.

I will decree $10,000.

FINAL DECREE.

Entered March 15, 1895.

This cause came on to be heard this day, and was argued by counsel:

Whereupon, the Court, for reasons stated in writing, and

filed herewith, as part thereof, does adjudge, order and decree as follows:

1. That the libellant, Leo Lomm, as master of the steam tug Dauntless, and on behalf of the owner and crew of said steam tug, do recover of the steamship Clandeboye, her cargo and freight money, for services in the libel mentioned, the sum of ten thousand dollars ($10,000), with interest thereon from May 26th, A. D. 1894, till paid, and the costs.

2. And, it appearing from the record that the said steamer Clandeboye, her cargo and freight money, was discharged from arrest, in this cause, by giving bond, with W. H. Strickland, Baring, Magoun & Company, Herbert L. Griggs and George F. Crane, as stipulators, it is further adjudged, ordered and decreed that Leo Loom, master, as aforesaid, do recover of W. H. Strickland, Herbert L. Griggs, George F. Crane and Thomas Baring, George F. Crane, Herbert L. Griggs, Cecil Baring and John J. McCook, and George F. Crane, as executors of the estate of George C. Magoun, deceased, as partners in trade, under name and style of Baring, Magoun & Company, the said sum of ten thousand dollars ($10,000), with interest thereon from May 26th, A. D. 1894, till paid, and the costs, and may have his writ of execution to enforce the payment of the same against the said stipulators, or any of them.

3. And the Court, proceeding to apportion the sum herein above decreed, does adjudge, order and decree, that out of the amount awarded, the following sums shall be allowed the crew:

Leo Lomm	$250 00
D. R. Devereaux	75 00
Sam'l Curtis	75 00
John Johnson	50 00
Martin Markham	50 00
John Young	25 00
John Savage	25 00
Rudolph Anderson	25 00
Harry Nilson	25 00

And it is further adjudged, ordered and decreed, that the said amounts awarded to the crew shall be net amounts, free

of counsel fees, and shall each bear interest from May 26th, 1894, till paid.

4. And it is further adjudged, ordered and decreed, that the balance of the award shall be paid to the owner of the said steamer Dauntless, or his Proctors of Record.

But no execution shall issue on this decree for the space of twenty days.

PETITION FOR APPEAL.

FILED MARCH 25, 1895.

To the Judges of the United States Circuit Court of Appeals, for the Fourth Circuit:

The petition of William H. Strickland, master and claimant of the Steamship "Clandeboye," respectfully represents that he is aggrieved by the final decree of the District Court of the United States, for the Eastern District of Virginia, entered in this cause at Norfolk, on the 15th day of March, 1895.

The said claimant and petitioner files, herewith, an assignment of errors, setting out, separately and particularly, each error asserted and intended to be argued on said appeal; and, feeling aggrieved by said decree, hereby appeals, from the whole of the said decree, to the Circuit Court of Appeals, for the Fourth Circuit, and prays that the same, together with a full Transcript of the Record, may be sent to said Court, without delay; and that said Court will proceed to hear said cause, and that said decree be reversed, and a decree be entered in favor of this petitioner, and that this petitioner may have such other and further relief as in law and justice he may be entitled to receive.

WILLIAM H. STRICKLAND,
MASTER and CLAIMANT of Steamship "CLANDEBOYE," by
BUTLER, STILLMAN & HUBBARD and
WHITEHURST & HUGHES,
Proctors.

Appeal allowed as prayed for; no further bond being required.

RO. W. HUGHES,
Judge.

March 25th, 1895.

ASSIGNMENT OF ERROR.

FILED MARCH 25, 1895.

THE CLAIMANT of the above named steamer, cargo and freight, having appealed from the final decree entered in this case in the District Court of the United States, for the Eastern District of Virginia, hereby assigns error, as follows, to the said decree :

1. For that the libel was not dismissed with costs.

2. For that the compensation and bounty, in an aggregate of Ten Thousand Dollars, with interest and with costs, was allowed to the libellant.

3. For that any allowance made to the libellant was not charged with the payment of all expenses incurred by the claimant in sending the steamer "Morse" to the assistance of the "Clandeboye," and all the expenses and damages for delay involved by the "Clandeboye's" being brought to the United States instead of Vera Cruz, her port of destination.

4. For that it was held that six thousand dollars was proper compensation for the towage service.

5. For that it was held that the libellant was entitled to any bounty.

6. For that it was held that the "Clandeboye" was in a position of danger, either from the seas or from the wreckers, who inhabit the Bahama banks.

7. For that it was not held that the libellant forfeited all claim for either compensation or bounty, in not communicating with the agents of the "Clandeboye," before going out, and for not advising the master of the "Clandeboye" that assistance had been engaged by his agents.

8. For that the costs were not awarded to the claimant against the libellant.

BUTLER, STILLMAN & HUBBARD and
WHITEHURST & HUGHES,

Proctors for Claimant.

CITATION.

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES—

To Leo Lomm, Master of the steam tug "Dauntless"—Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Fourth Circuit, to be holden at Richmond, on the 27th day of April, 1895, pursuant to an appeal from a decree of the District Court of the United States for the Eastern District of Virginia, at Norfolk, in your favor, passed in a cause in said court, wherein William H. Strickland, master of the steamship "Clandeboye," her cargo and freight money, was respondent and claimant, and you were libellant, to show cause, if any there be, why the decree rendered against the said respondent and claimant of said steamship "Clandeboye," in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Robert W. Hughes, judge of the District Court of the United States, for the Eastern District of Virginia, this 29th day of March, in the year of our Lord one thousand, eight hundred and ninety-five.

RO. W. HUGHES,
Judge.

Service accepted, March 29, 1895.

SHARP & HUGHES,
For Libellant.

STIPULATION.

FILED MARCH 15, 1895.

IT IS AGREED, by the counsel in this cause, that the Record upon Appeal shall consist of the following papers:

1st, Libel.

2nd, Answer.

3rd, Stipulation respecting values.

4th, Depositions of W. H. Rolson, James Ryan, Thomas E. Lewis, Sidney Groves, John Thomas, Harry T. Hay, John Jones, William H. Strickland, John Milbank, Thomas Cong-

don, Henry F. Morse, John W. Blaisdell, John Cooper Harris and William M. Tupper, with Exhibits; except those Exhibits annexed to the depositions of Henry F. Morse and John C. Harris, which are extended in the body of said depositions.

5th, Testimony taken upon the trial, in open court, with Exhibits.

6th, Opinion and Final Decree.

7th, Appeal Papers.

IT IS FURTHER AGREED, that no further security need be given, by Appellants, upon the appeal, and that no question shall be raised about the form of the decree, in giving a single decree against the Stipulators, without apportioning it between Vessel, Cargo and Freight-Money.

BUTLER STILLMAN & HUBBARD and
WHITEHURST & HUGHES,
For Appellant.

SHARP & HUGHES,
Norfolk, March 15th, 1895. *For Appellee.*

ORDER TO TRANSMIT RECORD.

Thereupon, it is ordered by the Court, here, that a Transcript of the Record and proceedings in the cause aforesaid, with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Fourth Circuit, to be held at Richmond on the 27th day of April, 1895.

And the same is transmitted accordingly.

Teste: H. S. ACKISS,
Clerk.

CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF VIRGINIA, } To-wit:

I, H. S. ACKISS, Clerk of the District Court of the United States for the Eastern District of Virginia, for the Fourth Circuit, do certify that the foregoing is a full and true record of the proceedings (according to a stipulation of counsel) and judgment of the said Court, in the therein entitled cause.

In testimony whereof, I hereunto set my hand, and affix the seal of the said District Court, on this 29th day of March, A. D. 1895.

(*Seal.*) H. S. ACKISS,
Clerk of said District Court.

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS. FOURTH CIRCUIT.

No. 130.

William H. Strickland, Master and Claimant of the Steamship "Clandeboye" Appellant, vs. Leo Lomm, Master of the Steamtug "Dauntless," Appellee.	Appeal from the District Court of the United States for the Eastern District of Virginia, at Norfolk.

April 22, 1895, Transcript Record on appeal filed and appearances of Butler, Stillman & Hubbard, and Whitehurst & Hughes were entered for the appellant, and the appearances of Sharp & Hughes entered for the appellee.

June 5, 1895 (May Term 1895), the cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Virginia, and was argued by counsel and submitted.

At the November term, 1895, to-wit: November 7, 1895, the Court announced and filed its opinion, Goff, Circuit Judge, dissenting, which is as follows, to-wit:

OPINION.

UNITED STATES CIRCUIT COURT OF APPEALS.

FOURTH CIRCUIT.

No. 130.

W. H. Strickland, Master of the Steamship "Clandeboye," Claimant, Appellant,	Appeal from the District Court for the Eastern District of Virginia, at Norfolk.
vs.	
Leo Lomm, Master Steamtug "Dauntless," Libellant, Appellee.	

[Argued June 5, 1895. Decided November 7, 1895.]

Before GOFF and SIMONTON, Circuit Judges, SEYMOUR, District Judge.

WILHELMUS MYNDERSE, of BUTLER, STILLMAN & HUBBARD, FLOYD HUGHES, for Appellant; ROBERT M. HUGHES, for Appellee.

OPINION.

SEYMOUR, J.

The material facts of the case are as follows: The Clandeboye, a large and valuable British steamer, had become disabled by breakage of machinery, and had arrived off the Little Bahama Islands. Her mate had been sent by a ship's boat for assistance, and had on the 15th of May, 1894, arrived at Savannah. In pursuance of telegraphic instructions cabled to him by the owners he had engaged the services of the *Morse* of N. Y., then, however, lying at the port of Philadelphia, which had agreed to proceed forthwith to the Little Bahamas and tow the Clandeboye to Vera Cruz, her port of destination, for the sum of $5,000. Leo Lomm (the libellant), part owner and master of the tug Dauntless, lying at the time at its home port of Brunswick, Georgia, having learned from the Savannah papers of the arrival at that port of the mate of the Clandeboye and of the condition and location of that vessel, on the 17th of May telegraphed through his agents to Savannah, and received a reply stating that the tug Morse of New York had been chartered to go to the assistance of the

Clandeboye. The distance from New York (and that from Philadelphia is about the same) to Stranger's Cay, where the Clandeboye was lying, is more than a thousand miles. From Brunswick the distance is about one-third as great. Captain Lomm's boat was lying idle. He concluded that he could beat the Morse in a race to the Clandeboye, and that, the master of the latter not knowing of the employment of the Morse, he could obtain a profitable job of salvage. The telegram announcing the employment of the Morse by the Clandeboye's owners reached Brunswick at a little after 3 p. m. of the 17th. Shortly after dark of the same day the Dauntless started for the Bahamas. She arrived at Stranger's Cay before noon of the 19th. Her master had the interview and made with the master of the Clandeboye the contract, which is a matter in litigation, immediately thereafter; and in a couple of hours the vessels left for Newport News one in tow of the other. Between three and four days afterwards the Morse reached the spot where the Clandeboye had been lying at anchor to find that she had gone.

The conversation between the masters of the steamer and of the tug, at Stranger's Cay, contains the contract entered into between them and the words that lead up to it. Captain Strickland's testimony upon the subject is as follows:

"Q. What time did the Dauntless come along? A. About 12:30.

Q. And the captain came aboard? A. Yes, sir.

Q. Who came with him? A. A man he has got with him as navigator. The captain is no navigator, and he brought a man, specially, with him.

Q. What did he do when he came aboard? A. Went down to the cabin.

Q. What did you do then? A. I asked him what he would tow the ship to Vera Cruz for, but he said he couldn't go there at any price; said he had no papers, for one thing, and that if he went his ship would be confiscated. I asked where he would tow us, and he said Nassau. I knew there was no way to dock her at Nassau, and he had no coals to take her anywhere else, and I arranged to tow her to Brunswick, so he could get coals, and after that to Newport News.

Q. Might you not have coaled him out of your own bunkers? A. Yes, sir; I offered to.

Q. What objection was made to that? A. Didn't make them, sir, except he wouldn't have them. I suppose he thought I would charge him for them.

Q. Just state, more in detail, what your conversation was? A. That's as near as I can remember. I asked what he would tow the ship to Newport News for, and he said wherever he towed her we had better not make any arrangement; it had better be left to the owners, to be settled by arbitration. He wouldn't make any bargain, at all.

Q. Did he say anything as to how he ascertained you were there, or anything about your mate, or boat's crew? A. Yes, he said he had seen in a Savannah paper that the boat had arrived in Savannah, and on the strength of that he came out. He reported to me that the boat and crew were all right.

Q. Did he tell you that the owners of the Clandeboye had engaged a tug to come for you? A. No, sir.

Q. Did he say anything more respecting the mate and his crew, beyond the fact that the papers said they had arrived? A. That was all, sir.

Q. He gave you no information that the owners were seeking assistance to come for you? A. No, sir."

Captain LOMM's testimony is:

"Q. Relate the conversation that occurred between you and him? A. When I got aboard the steamship—I and Captain Curtis—we were met by the captain, who says, "come down below," meaning in the cabin, of course; and, as we were going along the deck, the captain says, "did you hear anything of my mate and boat?" and I said, yes, sir; he is in Savannah; and the captain turned around and told the men the mate is all right; "the mate and boat is all right," he said, "tell that to the balance of the crew of the ship." We went down below, in the cabin, and, after we got down there, the captain said, "you say the mate is in Savannah?" and I said, yes, sir. He says, "did the mate send you?" and I said, no, sir; he said, "what brought you here?" I told him I had seen, in the Savannah Morning News, where his mate and boat had arrived in Savannah and wanted assistance; that the ship was disabled, and that she was on Bahama banks, and then he said, "you came on a spec.?" Then I said, yes, sir. So he told me he was ofiered assistance yesterday, and I said, by a steamer? and he said, "no, sir; these schooners round here came here yesterday, and wanted me to get up my anchor, and said they would tow me in, but I knew they wanted nothing else but to get my anchor off the bottom, and drift ashore, so that they could get a chance to

wreck my steamer; but," he says, "I expect a tug in a day or two," as he had engaged a schooner or two to go to Nassau, with a cable, and also to Jacksonville, to get tugs for him. "So," he said, "this is one of the cases, 'first come, first served.'" Then we were talking about where he wanted to go, and he said he said he wanted to go to Vera Cruz; and I said I could not tow him to Vera Cruz. He wanted to know the reason, and I told him, in the first place I couldn't carry coal enough to carry us to Vera Cruz; then, again I was not insured adywhere except the Atlantic, and then, again, it was in a foreign port, and a Spanish port besides; and I suggested to tow him to Brunswick or Savannah, and he said he couldnt do anything there, as they had to go in the dry-dock to be repaired. Then I told him Norfolk or Newport News is the best place I know of and he said, "yes; I know they have got a good dry-dock in Newport News;" and then it was agreed to tow him to Newport News."

The material facts in the testimony quoted are that Captain Lomm told Captain Strickland of the arrival of his mate in Savannah, but did not tell him of the employment of the Morse for his relief.

The result of the enterprise of Captain Lomm will be disastrous to the owners of the Clandeboye if the decree of the District Court is allowed to stand. Captain Lomm declined to take the Clandeboye to Vera Cruz, the port to which her cargo was consigned, and did tow her to Newport News, where she was repaired. Fifteen hundred tons of her cargo had to be unloaded and then reloaded before she proceeded to Vera Cruz. Her owners were compelled to pay to the owners of the Morse the sum of $1,900 for the services of that tug; and salvage compensation amounting to $10,000, double what the Morse had agreed to charge for towing the Clandeboye to Vera Cruz, has been awarded to the Dauntless. But the master of the steamship, in charge of his vessel and not in communication with his owners, was fully empowered to contract with the owners of the Dauntless. The contract made was binding unless invalidated by the conduct of Captain Lomm in concealing the fact that the owners of the Clandeboye had engaged the services of the Morse. As is said by the judge in the court below:

"Whether or not the right of Captain Lomm, to a salvage reward, was forfeited by his silence on the subject of the employment of the Morse, in his conferences at the Little Bahama banks, with Captain Strickland, is the

question on which this case depends. There is no doubt that Captain Lomm ought to have given this information to Captain Strickland. The question is whether his obligation to do so was so stringent as to constitute the omission a fraudulent piece of deception."

While the right to salvage does not necessarily always arise out of an actual contract, it does so in the case at bar. Services spontaneously rendered to vessels wrecked, or under the conditions of an earlier period, set upon by pirates, or attacked by enemies, or captured and rescued, are recompensed with salvage money whether the services were or were not requested. The present case, however, is one of a different character. The Clandeboye, at anchor off the Bahamas, though disabled and in a position of contingent peril, was not wrecked. She had remained eleven days without injury, where she then was, and was under the plenary control of her master, who was at full liberty to accept or refuse the services of the Dauntless. The arrangement entered into between the two masters constituted a contract, and is subject to the principles which regulate the validity of contracts. If valid, the Courts of Admiralty are bound to enforce it, if not to set it aside, in accordance with the general rules affecting all contracts. The law of contracts requires of the parties to them mutual good faith. Is there any principle of mercantile law by which that obligation to good faith which required Captain Lomm to inform Captain Strickland of the hiring of the Morse is relaxed, and is not of so stringent a force as to make the omission fraudulent. If there is, it must be sought in the analogies of the rule of *Caveat Emptor*.

The doctrine of *Caveat Emptor* belongs, strictly speaking, to the law of sales. But its principles apply to other contracts. Nor is it a doctrine peculiar to the common law. It is in force in all mercantile communities and has always been administered under the civil law. Pothier says, speaking of the contract of sale: "Good faith prohibits not only falsehood, but all suppression of everything which he with whom we contract has an interest in knowing touching the thing which makes the object of the contract"; but he adds, speaking of contracts where one party has not revealed all his information to the other: "the interest of commerce" does not permit "parties to be readily admitted to demand a dissolution of bargains which have been concluded. They must impute it to themselves in not being better informed." Pothier, Contract of Sale, Pt. II., Ch. II., §§ 234, 239.

In the case of *Lardlow* v. *Organ*, Chief Justice Mar-

shall says: "The question in this case is whether the intelligence of extrinsic circumstances which might influence the price of the commodity, and which was exclusively within the knowledge of the vendee, ought to have been communicated by him to the vendor. The court is of the opinion that he was not bound to communicate it. It would be difficult to circumscribe the contrary doctrine within proper limits, where the means of intelligence are equally accessible to both parties, *Lardlow* v. *Organ*, 2 Wheat 178. "Under the general doctrine of *Caveat Emptor* the vendor is not ordinarily bound to disclose every defect of which he may be cognizant, although his silence may operate virtually to deceive the vendee." Story on Contracts, § 516. The general rule both of law and equity in respect to concealments," says Lord Thurlow, "is that mere silence with regard to a material fact which there is no obligation to divulge will not avoid a contract. Thus if A, knowing that there is a mine in the land of B, of which B is ignorant, should contract to purchase the land without divulging the fact it would be a valid contract, although the land were sold at a price which it would worth without the mine, because A is under no legal obligation by the nature of the contract to give any information thereof." *Fox* v. *Mackreath*, Leading Cases in Equity.

"Without some such general rule the facilities of sale would be greatly impeded and there would be no security to the vendor" (or to the vendee.) Story on Contracts, § 517.

It will be noticed that the general rule of law is a requirement of good faith in mutual dealings, and that the doctrine of *Caveat Emptor* is an exception to such requirement founded upon special reasons, viz: the necessities of commerce, and the impossibility of so limiting any other doctrine as to do justice. As Chief Justice Marshal says, "It would be difficult to circumscribe the contrary doctrine within proper limits." The necessities of commerce require that enterprise should be encouraged by at least allowihg diligence its due reward and not interfering with any proper and reasonably fair competition for intelligence. Any other course would set the active and the slothful upon an equality. *Vigilantibus non dormentibus jura subvenient.*

Even more weighty is the second reason given in support of the doctrine. The law works with blunt tools. Fallible memories, prejudiced statements, intentional falsehood, the bias of self interest, ignorance and stupidity, are all concomitants of much of the testimony from which she

has to make up her judgments. General rules applicable to the majority of cases, but sometimes having an oppressive bearing upon particular ones, make up the principles upon which of necessity she founds her decisions. For the law must be workable. It must be comprehensible to men who live under its rule, and must not be so complex as to overburden the memory with minutiæ. Farther: were it open in all cases of contracts, for a dissatisfied party to cry off, by saying that the other party had known better than he the value of the subject matter, or the market price, or some other extrinsic circumstance, there would be no finality in human dealings, and the only limitatinn to the litigation that would ensue, would be that imposed by the diminution of business caused by such want of finality and certainty.

But *Caveat Emptor* is but the exception and not the rule. Its operation is to be diligently circumscribed within proper limits. The doctrine is not applied (1) to cases of active fraud, one variety of which consists in misrepresentation of facts, including what is often equivalent, partial statements. It is not applied (2) to cases in which trust is implied by reason either of the relations to one another of the parties, or the nature of the contract. Nor (3) to cases in which in the absence of *laches* in the party injured, the persons dealing with one another do not deal upon mutually equal terms, by reason of there being special knowledge in the possession of one party, which is inaccessible to the other.

1. The case of actual or implied misrepresentation needs no illustration.

2. That of trust includes all the known fiduciary relations, such as those of attorney and client, guardian and ward, agent and principal and generally of all who stand in the relation of trustee, and *cestui que trust*. It also includes dealings with regard to all matters which from their nature demand mutual confidence. One seeking insurance is bound to state all facts within his knowledge which would have an influence on the terms of the contract, but are unknown to the insurer. A vendor of goods is bound to point out any latent defect in them known to himself. A person selling negotiable paper warrants that he has no knowledge of any facts which prove it worthless. It is held that if one sells to another a check of a third party knowing that other checks of the same party have been recently dishonored, without communicating the fact to the buyer, it is a fraudulent concealment. *Brown v. Montgomery*, 20 N. Y., 287.

3. The case of information possessed by one party and absolutely unobtainable by the other, though of rarer occurrence is one in which the enforcement of the rule of good faith is fully as imperative as it is in the two classes of cases first mentioned. It is perhaps not properly an exception to the doctrine of *Caveat Emptor*, but rather a case outside of its terms. The *purchaser* cannot *look out* for what he cannot have knowledge of. It is thus stated by Chancellor Kent in his commentaries: "If there be an intentional concealment or suppression of material facts in the making of a contract in cases in which both parties have not equal access to the means of information, it will be deemed unfair dealing and will vitiate and avoid the contract." Kent's Com. Lect. XXXIX, Vol. 2, *482. It is implied in Judge Marshall's opinion in *Lardlow* v. *Organ*, already cited, in the sentence ending with the words, "Where the means of intelligence are equally accessible to both parties." *Supra*. Under this exception, more logically than under that of special confidence, where it is generally placed in the text books, comes the obligation of one who has manufactured goods to reveal to a purchaser any latent defect in them known to himself; and the similar obligation of a vendor of real estate to inform a vendee of all incumbrances placed by himself upon the land. Where one party to a contract has information inaccessible to the other neither of the reasons assigned for the principle of *caveat emptor* apply. The contract is not one which should be sustained to encourage mercantile competition and diligence, for where knowledge cannot be obtained competition is impossible and diligence useless; there can be no vigilance to be rewarded or sloth to be discouraged. Nor would much danger of unsettling the finality of business transactions or of opening bargains to the uncertainties of conflicting testimony about the equality of knowledge of the parties be likely to arise by reason of the invalidating of contracts for this cause.

The case at bar is the first of the kind that has come before a court of admiralty, but it is as striking a one as could be imagined or invented. It is one in which one party to the bargain has knowledge of a fact which, if known to the other, would have prevented the making of the contract. The ignorance of the fact on the part of the second party is one which cannot be made a subject of controversy. And this ignorance was known to the party suing upon the contract. To give him the benefit of it to the injury of the claimants would be, in our opinion, a startling violation of the fundamental principle of all law,

that equity is equality. We think that the agreement between the masters of the two vessels, made in the case at bar, is infected with all three of the vices just stated, and is, therefore, not within the doctrine of *caveat emptor*. It must, therefore, be declared void under the principle that requires good faith in mutual dealings.

(1) Without placing as much stress upon the point as upon the other two, we yet think it may be fairly held that in telling a part, but not the whole, of the truth to Captain Strickland, Captain Lomm was guilty of that *suppresio veris* which the law calls fraud. By this concealment he induced the former to make a contract which was contrary to the wishes and intents of his owners who had already made with another a more favorable bargain; a contract that he would not have made had the facts been fully disclosed.

(2) The relation of salvor and saved, while not one of the fiduciary relations generally referred to in the law books and accurately defined as well as classified, is yet a fiduciary one. This will be readily apparent when we remember that in a large number of cases of salvage, particularly the earlier ones, the salvor has actually been in possession of the property saved, holding it for the lien which maritime law gives, and liable as trustee to the owner after the receipt of salvage. Besides this reason, another is to be found in the special confidence resulting from the very nature of the services rendered. We think special confidence as much belongs to the relation between salvor and saved as to that between insurer and insured.

(3) Were the other reasons of declaring the contract void absent, we should unhesitatingly do so on the third ground, viz: because the parties were not dealing on terms of equality. There was on the part of Captain Lomm an intentional suppression of a material fact, in relation to which he was informed, while Captain Strickland had not access to any means of obtaining information of it. Looking at the position of the two parties to the bargain from another point of view, there appears to have been a striking inequality between them. The master of the Clandeboye had, when the Dauntless arrived at Stranger's Cay, been for nearly four weeks in a disabled vessel. He had lain helpless at his anchorage for eleven days; his only assistant, who was a navigator, the mate of the vessel, was absent, and he was alone in authority over the Clandeboye. He was suffering from the pressure of anxiety, responsibility and delay. The master of the Dauntless, aware of all the circumstances, intent solely upon gain, fresh from

home, with a mind disengaged and at ease, had an unfair advantage over him. In the short period during which he considered and agreed to accept the services proffered to him, Captain Strickland can hardly be supposed to have had the time or grasp of the facts that would have enabled him to have drawn all the inferences from the fact of his mate's opportunities in Savannah that have been imagined by counsel. During that hurried interview between the masters of the two vessels, it doubtless confusedly occurred to the master of the Clandeboye that his mate was trying to do something for him, and that tugs would be at hand in a short time prepared to tow him somewhere; probably he thought of the nearest ports. His conversation shows that thoughts of this kind were in his mind. He was anxious to get away, and with the words "first come first served," he made terms with Captain Lomm, whose tug had arrived first. But it would be unjust to suppose that he expected or had in his mind any thought of the possible existence of what was actually the fact, viz: a contract under which a powerful tug had been employed by his owners to tow him to the place to which he desired to be taken—Vera Cruz—and was already on the way to Stranger's Cay, near the Little Bahamas, where he was lying. We see no reason to doubt his statement that if he had known of the employment of the Morse he would not have employed the Dauntless. The parties were not dealing on equal terms, and their contract cannot be enforced.

While, however, the contract must be set aside, it does not necessarily follow that the libellant is entitled to no compensation. The question remains, of what, if anything, the Dauntless is entitled to for any net benefit actually received by the Clandeboye from her services. It would be inequitable to allow the latter to refuse to pay for anything of use actually received by her. Nor do we wish to extend to a new case the exaction of penalties in civil actions.

In the actual condition and position of the Clandeboye when taken in tow by the Dauntless she needed two things, repairs and the opportunity of taking her cargo to Vera Cruz. If Captain Lomm had not interfered she would have been towed to Vera Cruz by the Morse at an expense, including cost of taking her mate and three seamen from Tybee, of $5,200; upon arriving at Vera Cruz she could have discharged herself of her cargo, but could not have been repaired, owing to the fact that there were no facilities there for docking vessels. It would, therefore, have been necessary to have taken her to some port possessed of

such facilities. New Orleans, Pensacola and Newport News have been suggested. The former places were nearer Vera Cruz than Newport News, but the latter is understood to have very superior facilities of the kind needed. The Dauntless rendered a real service to the Clandeboye in towing her to Newport News, where she could be docked. After being repaired it became possible for her to proceed to Vera Cruz under her own steam; but it seems probable, from the testimony, that had she been towed to Vera Cruz in the first instance, she would have been compelled to take a tug in her journey to a dry dock. This expense she has been saved. In addition to this, she was saved by the Dauntless from the perils of a four days longer stay at her anchorage. On the other hand, at Newport News she was put to the expense of unloading and reloading fifteen hundred tons of her cargo, which is stated by Captain Strickland to have been $1,200. The captain also states that the time occupied was sixteen days, and estimates demurrage at £45 per day. From this demurrage there ought to be deducted the four days time saved her by the Dauntless, in taking her from Stranger's Cay before the arrival of the Morse. I suppose, too, that the demurrage is estimated at charter party rates, and is excessive. I should be disposed to allow $1,700 for it. The amount lost to the owners of the Clandeboye by their obligations to the owners of the Morse was $1,900. The total on this side, as I estimate it, would be $4,800, besides costs of steaming from Newport News to Vera Cruz. Against this is the saving of the $5,200, which was to have been paid for the services of the Morse, the cost of taking the Clandeboye from Vera Cruz to a port with docking facilities, which would have been necessary had she been towed to Vera Cruz before being repaired. And the benefit to her of her earlier rescue from the perils of her position on the coast of the Little Bahamas.

On the whole the court allows one thousand dollars as the net gain to the owners of the Clandeboye for the services of the Dauntless.

Decree modified and rendered in favor of the libellant in the sum of one thousand dollars.

GOFF, Circuit Judge.

I agree with the court that the agreement made by the masters of the Claudeboye and the Dauntless, must under the circumstances shown to have existed at the time it was entered into, be declared void, and that it cannot be enforced

in a Court of Admiralty. I do not concur in that part of the opinion that allows the libellant compensation for the services rendered by the Dauntless, undertaken as they were in bad faith, with a fraudulent purpose and the intention of suppressing the truth, thereby taking advantage of a vessel, if not in danger at least in distress, and causing its owners an additional and unnecessary expense. In a case of this character, a court of admiralty is a court of equity, and a party who asks its aid must come before it with clean hands, and with such facts as will *ex æquo et bono* show a case proper for its interposition. If the salvors have been guilty of misconduct or of negligence, or have been in collusion with the master, or have attempted to take advantage of the unfortunate, they have thereby forfeited all claim for compensation, even for services actually rendered. *The Boston*, 1 Summer, 328 Fed. Cases, 1673; *The Byron*, 5 Adm. Rec., 248, Fed. Cases 2275; *The Lady Worsely*, 2 Spinks, 253; *The Bello Corrunes*, 6 Wheat., 152; Marvin on Wreck and Salvage, Sec. 222; Jones on Salvage, 124; Cohen's Adm. Law, 171.

Undisputed facts of this case show it to be, at least, most peculiar, the books containing nothing similar to it, and in my judgment the courts should not aid in duplicating it, by tolerating such litigation. I think that the decree of the District Court should be reversed and the cause remanded with directions that the libel be dismissed and that the claimant recover all costs.

At the same term, to-wit: November 9, 1895, the court here made and entered the following decree, to-wit:

DECREE.

Filed Nov. 9, 1895.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

No. 130.

William H. Strickland, Master and Claimant of the Steamship "Clandeboye," Appellant,

vs.

Leo Lomm, Master of the Steamtug "Dauntless," Appellee.

Appeal from the District Court of the United States for the Eastern District of Virginia.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said District Court, in this cause, be, and the same is hereby, reversed, with costs; and this cause is remanded to the District Court of the United States for the Eastern District of Virginia, at Norfolk, with direction to enter a decree for the libellant, owners of the Steamtug "Dauntless," for the sum of one thousand dollars, with interest from the date of this decree until paid, at the same rate per annum that similar decrees bear in the courts of the State of Virginia, and costs, as incurred in said District Court; and that said District Court apportion the salvage award among the parties entitled thereto as to it may seem just; and it is ordered that the appellant recover all costs incurred in this court. It is further ordered that the mandate of this court issue after the expiration of twenty days from the date hereof.

CHARLES H. SIMONTON,
Circuit Judge.

November 9, 1895.

MANDATE.

Issued and transmitted November 30, 1895.

UNITED STATES OF AMERICA, *ss:*

Seal of the Court.

The President of the United States of America, To the Honorable Judge of the District Court of the United States for the Eastern District of Virginia—Greeting:

Whereas, lately in the District Court of the United States for the Eastern District of Virginia, before you, or some of you, in a cause between Leo Lomm, Master of the Steamtug "Dauntless," libellant, and William H. Strickland, Master and Claimant of the Steamship "Clandeboye," respondent, wherein the decree of the said District Court entered in the said cause on the 15th day of March, 1895, is in the words following, to-wit:

This cause came on to be heard this day, and was argued by counsel:

Whereupon the court, for reasons stated in writing, and filed herewith, as part thereof, does adjudge, order and decree as follows:

1. That the libellant, Leo Lomm, as master of the steamtug Dauntless, and on behalf of the owner and crew of said steamtug, do recover of the steamship Clandeboye, her cargo and freight money, for services in the libel mentioned, the sum of ten thousand ($10,000) dollars, with interest thereon from May 26th, A. D. 1894, till paid, and the costs.

2. And, it appearing from the record that the said steamer Clandeboye, her cargo and freight money, was discharged from arrest, in this cause, by giving bond, with W. H. Strickland, Baring, Magoun & Company, Herbert L. Griggs and George F. Crane, as stipulators, it is further adjudged, ordered and decreed that Leo Lomm, master, as aforesaid, do recover of W. H. Strickland, Herbert L. Griggs, George F. Crane and Thomas Waring, George F. Crane, Herbert L. Griggs, Cecil Baring and John J. McCook, and George F. Crane, as executors of the estate of George C. Magoun, deceased, as partners in trade, under name and style of Baring, Magoun & Company, the said sum of ten thousand dollars ($10,000), with interest thereon from May 26th, A. D. 1894, till paid, and the costs, and may have his writ of execution to enforce the payment of the same against the said stipulators, or any of them.

3. And the court, proceeding to apportion the sum hereinabove decreed, does adjudge, order and decree that out of the amount awarded the following sums shall be allowed the crew:

Leo Lomm,	$250.
D. R. Devereaux,	75.
Sam'l Curtis,	75.
John Johnson,	50.
Martin Markham,	50.
John Young,	25.
John Savage,	25.
Rudolph Anderson,	25.
Harry Nilson,	25.

And it is further adjudged, ordered and decreed that the said amounts awarded to the crew shall be net amounts, free of counsel fees, and shall each bear interest from May 26th, 1894, till paid:

4. And it is further adjudged, ordered and decreed that the balance of the award shall be paid to the owner of the said steamer Dauntless, or his Proctors of Record.

But no execution shall issue on this decree for the

space of twenty days; as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Fourth Circuit by virtue of the appeal of the said claimant of the steamship "Clandeboye," agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And, whereas, in the term of May, in the year of our Lord one thousand eight hundred and ninety-five, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Fourth Circuit, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said District Court, in this cause, be, and the same is hereby, reversed, with costs; and this cause is remanded to the District Court of the United States for the Eastern District of Virginia, at Norfolk, with direction to enter a decree for the libellant, owners of the steamtug "Dauntless," for the sum of one thousand dollars, with interest from the date of this decree until paid at the same rate per annum that similar decrees bear in the courts of the State of Virginia, and costs as incurred in said District Court; and that said District Court apportion the salvage award among the parties entitled thereto as to it may seem just; and it is ordered that the appellant recover all costs incurred in this court. It is further ordered that the mandate of this court issue after the expiration of twenty days from the date hereof.

CHARLES H. SIMONTON,
Circuit Judge.

November 9, 1895.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in accordance with the opinion and decree of this court, as according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, the thirtieth day of November, in the year of our Lord one thousand eight hundred and ninety-five.

HENRY T. MELONEY,
Clerk of the U. S. Circuit Court of Appeals for the Fourth Circuit.

COSTS OF APPELLANT.

Clerk,	$ 37 20
Printing Record,	201 45
Attorney,	20 00
	$258 65

CLERK'S CERTIFICATE.

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the aforegoing is a true copy of the entire record in the therein entitled cause, as the same remains upon the files and records of the said Circuit Court of Appeals.

{ Seal of the Court. }

In testimony whereof I hereto set my hand and affix the seal of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, this 4th day of January, A. D. 1896.

HENRY T. MELONEY,
Clk. U. S. Cir. Ct. Appeals, 4th Circuit.

Office Supreme Court, U. S.
FILED.
MAR 20 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 945.

WILLIAM H. STRICKLAND, MASTER AND CLAIMANT OF THE STEAMSHIP "CLANDEBOYE," APPELLANT,

vs.

LEO LOMM, MASTER OF THE STEAMTUG "DAUNTLESS."

PETITION OF APPELLEE FOR A WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF SAME.

ROBERT M. HUGHES,
Proctor for Appellee.

(16,235.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 945.

WILLIAM H. STRICKLAND, MASTER, &c., APPELLANT,

vs.

LEO LOMM, MASTER, &c.

PETITION AND BRIEF.

The petition of Leo Lomm, as master of the steamtug *Dauntless*, respectfully shows to this honorable Court as follows:

On Sunday, April 22, 1894, the British steamship *Clandeboye*, while on a voyage from Cardiff to Vera Cruz, broke down at sea. The injury consisted in the breaking of the tail shaft, completely disabling her. She drifted about at the mercy of wind and wave, vainly trying to control her drift by sea anchors and other devices, until Wednesday, May 9, 1894, when she had drifted so near to Stranger's Cay, in the Bahamas, that she came to anchorage. Her log shows that during that period she did all she could to keep off from the shore, but with this result. The next morning the master sent the chief officer with the port life-

boat and a crew to search for assistance. She remained at this anchorage until Saturday, May 19, being blessed with good weather during that time, but being in constant apprehension, as shown by four separate entries in her log that the ship was straining at her cables, lest her cable should part and she would be wrecked upon one of the numerous reefs. To the east and north she was fully exposed and the only protection from the west was hidden shoals.

On the 19th of May the petitioner, in charge of the *Dauntless*, arrived and offered to tow her to a haven. The master of the *Clandeboye* first asked him if there was any news from his lifeboat which he had sent in search of assistance. The petitioner informed him that the lifeboat had arrived in Savannah. The master asked him if he had been sent by the lifeboat, to which petitioner replied in the negative, and stated frankly that he had come on a speculation. The master of the *Clandeboye* sent his engineer aboard the *Dauntless*, examined her thoroughly, and decided to allow the petitioner to take him in tow, stating at the time that he knew that other tugs were on their way to his assistance, and that when he left, the place would be flooded with tugs, and stating also that he had sent to several places to secure them.

The *Dauntless* took the steamer in tow, and after a voyage of several days, part of it in stormy weather, delivered her safely at Newport News.

The only contract made was to leave the amount of compensation to arbitration. On arrival the petitioner offered to carry out this contract, but Milbank, the insurance agent, who seemed to have superseded the master, declined on the ground that it was not in writing. Thereupon the petitioner libeled the *Clandeboye* and her cargo for salvage.

The main defense set up was that the petitioner had forfeited all salvage by failing to inform the master of the *Clandeboye* that the tug *Morse* had been chartered to go to

his assistance. As a matter of fact the *Morse* did not arrive at the locality until four days afterwards, and a storm had intervened in the meanwhile.

This, however, was set up as demanding a complete forfeiture of all salvage service.

The case came on for hearing in the district court, which awarded the petitioner $10,000 as salvage (the valuation of the *Clandeboye*, her cargo, &c., being $77,000); whereupon the master of the *Clandeboye* appealed to the circuit court of appeals for the fourth circuit. That court reversed the decision of the district court, two of the judges holding that the failure of the petitioner to state this fact of the employment of the *Morse* set aside the contract (though there was no contract), but still entitled him to an award of $1,000, and the third judge dissented and contended that the extreme penalty of an absolute forfeiture of all salvage should be visited upon the petitioner.

The ground of the decision of the district court was that even if this was an improper concealment it did not affect the action of the master of the *Clandeboye*, as he had information that the men whom he had sent for the very purpose of obtaining tugs had arrived, and as he intended all along, according to his own testimony, to make it a case of first come, first served.

The decision of the majority of the appellate court was based upon some supposed analogy of the fresh-water doctrine of *caveat emptor* applicable to a salt-water case like the one at bar.

The petitioner respectfully submits that he is aggrieved by this decision, and that the novel question involved (how far the mere failure to volunteer unasked information in a salvage case should affect a salvage award) is of sufficient importance to justify this Court in issuing a certiorari to consider it.

If the question submitted was simply one as to the amount of salvage to award in a salvage case, this petitioner would

file this petition with but faint hopes of success. That question is so largely a matter of discretion that even in a case like the one at bar, where the circuit court differed with the district court and the different judges of the circuit court even differed with each other, this Court would hardly interfere. For the purposes of this petition, therefore, it will be assumed that but for this question of forfeiture of salvage the award of $10,000 on a valuation of $77,000 could not seriously be questioned, considering the lonely place where this vessel was and the danger from wind and wave, the danger from Bahama wreckers, and the merits of the salvage service itself.

On the general subject of amount we refer to the cases of—

The North Erin, 71 *F. R.*, 430.
The Pomona, 37 *F. R.*, 444.
The O. D. Grace, 49 *F. R.*, 662.
The Tragerno, 51 *F. R.*, 958.
The Edom, 13 *F. R.*, 136.
The Daniel Steinman, 19 *F. R.*, 918.

Nor is it deemed necessary to discuss at any length the question whether any harm was done the vessel or her owners by towing her to Newport News instead of Vera Cruz. The proof on this point is that the vessel could not have been repaired at Vera Cruz, as there was no dry dock (testimony of Hay; R., 42), which is conclusive on this point.

The petitioner respectfully submits that the facts do not show any bad faith on his part or any suppression of necessary information. The only ground on which he is criticised, in the opinion of the court, is that he failed to tell Strickland that the tug *Morse* had been engaged to come to his assistance. There is no proof that Strickland asked him the question whether any tugs had been engaged by his mate. There is proof from the log of the *Clandeboye* itself that as early as May 10 the boat had been sent for the

very purpose of engaging assistance. There is proof in the log on May 17 that a request for assistance had been sent to Jacksonville and Nassau. There is proof in the log of May 19 that the arrival of the very boat which had been sent for assistance was reported by the *Dauntless*. What additional information, therefore, would have been given to the master if he had been told that the mate had engaged a tug? Strickland himself expressly said, when asked the question why he accepted the services of the petitioner:

"Q. Why did you accept his service? Didn't you suppose the mate would send one? A. *I knew he would*, but in the meantime the ship was lying there, eating her head off. Q. Didn't you think it possible that some other tug might come along in the course of a day or two? A. I expected them to come from all quarters, but it was a sort of first come, first served. Q. What would be the effect after one had come? A. I expect after we had gone the place was flooded with tugs."

Hence when he engaged the petitioner he knew as much as he would have known if the petitioner had expressly told him that a tug had been engaged to come out for him. The misrepresentation, therefore, if a misrepresentation at all, was an immaterial one, which did not affect his course. His own testimony shows that he had made up his mind to accept the first one that came, and that the information would not have changed it, and that he did accept the services of the *Dauntless*, with a full knowledge that other tugs were on their way to assist him. Nor was he as demoralized as the opinion of the circuit court of appeals would represent him. He does not set up any such claim in his own testimony. He expatiates on the discipline of his crew and the steps taken by him to protect his ship and even to navigate her in through the reefs if necessary. So far from accepting petitioner's tug at the first offer, the record shows that he sent his engineer aboard of her and had her general character and power thoroughly examined, and did not permit

the towage to commence until he fully satisfied himself that the tug was ample for the purpose.

How the mere omission to mention a fact that was implied by the information freely given of the arrival of his boat should be visited with the severe penalty insisted on is hard to understand, and yet for this mere oversight a stigma has been placed upon your petitioner and a heavy loss has been visited upon his owners.

"It does not follow that because information on some material point or points is offered, or is given, or is requested by a purchaser from the court, it must therefore be given on all others as to which it is neither offered nor requested and concerning which there is no implied representation, positive or negative, direct or indirect, in what is actually stated."

Coaks vs. Boswell, 11 *App. Cas.*, 232.

The rules covering forfeiture of salvage are not as heartless as this.

"Where success is finally obtained, no mere mistake or error of judgment in the manner of procuring it, no misconduct short of that which is willful and may be considered criminal, and that proved beyond a reasonable doubt by the owners resisting the claim will work an entire forfeiture of salvage. Mistake or misconduct other than criminal which diminishes the value of the property salved or occasions expenses to the owners is properly considered in the amount of compensation to be awarded. Willful or criminal misconduct may work an entire forfeiture of it, but that must be proved by those who dispute it."

Jones on the Law of Salvage, *p.* 125.

The Cherokee, 31 *F. R.*, 167.

A careful examination of the decisions on the subject of the forfeiture of salvage will disclose the fact that it takes even more than positive fraud to work a forfeiture. The cases cited in the opinion of the dissenting judge of the appellate court which hold that the salvage should be forfeited entirely were cases where actual theft or embezzlement or

criminal acts were proved upon the salvors. Not one was a case of mere omission to mention a fact which might well have seemed immaterial to men not gifted with the trained minds of lawyers and judges, and which did seem immaterial to the petitioner. There is no pretense in this case that the petitioner answered untruthfully a single question that was asked him. There is no pretense that he or any of his crew misled the master of the *Clandeboye* by any positive statement or misbehaved in any respect in their salvage service.

If there was any deception or improper conduct, it was on the other side. The unreliability of the testimony of Strickland will sufficiently appear by contrasting it with his log. The log is printed in the Record, pages 79 to 113, and the testimony of Strickland abounds in statements positively at issue with it. His pretense that the word "straining" on four different occasions was a mistake for "springing," that his vessel was in no danger where she was anchored, and his numerous other statements in conflict with the log will show his recklessness.

Not only that, but he himself is the respondent in this case, and comes into court setting up his own wrong. He admits attempting to have numerous tugs come to the place of his wreck, intending to take only one and thereby deceive all the rest. He admits that there was a positive contract between him and petitioner to arbitrate, and that it was deliberately violated. The facts show that this very tug *Morse*, which did not arrive at Stranger's Cay until four days after the *Clandeboye* left, overtook her just below the capes of Virginia and transferred back to her the crew of the lifeboat which had gone to Savannah for assistance. Certainly they then knew of the deception, if it was such, and if they are right in their contention they had a right then and there to cast off the hawser of the *Dauntless* and turn their ship over to the *Morse*. They had a right, if their position in this case is a sound one, to do what any man can

do when he has been defrauded—to repudiate the contract as soon as he discovers the fraud—and yet, with that undoubted and unquestionable right, they allowed the *Dauntless* to continue on her voyage; they allowed her to take them to Newport News to the dry dock. They did not say a word about having been defrauded until their answer was filed in reply to the original libel, and then for the first time they raise the cry of fraud. It is a case where they should have acted promptly upon its discovery, discharged the *Dauntless* outside of the capes, and turned their vessel over to the *Morse*, and at least have saved the *Dauntless* the long trip to Newport News and the delay incident thereto. It is emphatically a case where those who are silent when equity requires them to speak shall not be heard to speak when equity requires them to be silent.

Heretofore a vessel which promptly proceeds to the relief of a distressed vessel has been considered to do a meritorious act. Promptness is one of the highest merits of salvage service.

The Mary E. Dana, 17 *F. R.*, 358.
The North Erin, 71 *F. R.*, 430.

It was contended by the claimant that there was no contract between the *Dauntless* and the *Clandeboye*, and that the master could not make a contract after he had sent for assistance. The man whom the master sent for assistance and the agents in Savannah whom the messenger employed were, after all, but agents of the master and did not supersede the power of the master upon the reefs to do what he himself thought under surrounding circumstances was the best for his vessel.

Salvage does not depend upon a contract.

"Voluntariness on the part of the salvor is, equally with danger to the thing saved, an essential element in the constitution of a salvage service. The salvage of property has been described as the service which volunteer adventurers

spontaneously render to the owners in the recovery of property from loss or damage at sea, under the responsibility of making restitution, and with a lien for their reward. 'What is a salvor?' said Lord Stowell in *The Neptune*. A person who, without any particular relation to a ship in distress, proffers useful service and gives it as a volunteer adventurer without any pre-existing covenant that connected him with the duty of employing himself in the preservation of that ship.'"

Kennedy's Law of Civil Salvage, p. 25.

Whatever may be the power of owners, they could not supersede the master in that way.

Heretofore the master of a vessel has been considered to have much more authority than the appellant seems to concede to himself. It may be true that when the owner is actually present with the captain his authority ceases, and it was to such a state of facts that the authorities cited by the appellant referred; but there was no owner on the Bahama reefs to see, from day to day, the perils which threatened his vessel.

The master of a vessel owes duties to others than the owner. He owes it to the owner of the cargo; he owes it to the twenty-two members of his crew whose lives are in his hands.

He had information from day to day which a Savannah ship broker and a London owner had not; he even had information which his own mate in Savannah had not, for that mate had left the very morning after the vessel came to anchor, without any opportunity to examine the currents, the anchorage, the channel, or the numerous other surrounding circumstances which a nine days' delay had brought to the captain's attention.

It would be unwise to hold that the master, with all this additional information, was superseded from his right to take prompt and effectual steps for saving his vessel by the fact that a man sent by him had communicated by a few

cables with his owners and that they had exchanged a few other cables with their agents. Such is not the law and never can become the law.

Anderson vs. S. S. Co., 10 *A. C.*, 107–116.
The Britain, 1 *W. Rob.*, *at p.* 43.
The George Jones, 48 *F. R.*, 925.

The opinions of the district court and of the circuit court of appeals are filed herewith as an appendix for convenience of reference.

The petitioner herewith files a certified copy of the record in the case.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under seal of this Court, directed to the United States circuit court of appeals for the fourth circuit, commanding the said court to certify and send to this Court, on a certain day to be therein designated, a full and complete transcript of the record of all proceedings of the said circuit court of appeals in the said cause, to the end that said cause may be reviewed and determined by this Court, as provided in section 6 of the act of Congress entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the provisions of said act, and that the said judgment of the said circuit court of appeals in the said cause may be reversed by this honorable Court in the particulars above mentioned.

And your petitioner will ever pray, etc.

PETITIONER,
By ROB'T M. HUGHES, *Counsel.*

STATE OF VIRGINIA,
Corporation of the City of Norfolk, } *To wit:*

Personally appeared Robert M. Hughes, who, being duly sworn, on his oath says that he is counsel for Leo Lomm, the petitioner above named, and as such had personal charge for them of the case in the foregoing petition mentioned in the district court of the United States for the eastern district of Virginia and in the United States circuit court of appeals for the fourth circuit; that he has read the petition by him subscribed, and that the facts therein stated are true to the best of his knowledge and belief.

ROB'T M. HUGHES.

Sworn to before me and subscribed in my presence this — day of March, A. D. 1896.

[SEAL.]

H. H. LITTLE,
Notary Public.

APPENDIX.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF VIRGINIA.

LEO LOMM, *Master*,
vs.
THE STEAMSHIP CLANDEBOYE.

Opinion.

The libelant is master of the steamtug *Dauntless*, of Brunswick, Georgia. The tug is new and of steel, with compound engine of 350 horse-power. She was built for towage services and for rendering assistance to vessels in distress upon the high seas. Her value is $30,000. She is 110 feet long and draws 10 feet of water when without coal.

On the seventeenth day of May, 1894, her master heard that the large ocean steamship *Clandeboye*, with a broken shaft, was lying at anchor on the Bahama banks, and that the mate was in Savannah for the purpose of procuring assistance.

The value at risk is, by agreement, assessed at $77,000—ship, cargo, and freight money.

The *Dauntless* was then in Brunswick. On the seventeenth the master read a statement in the Savannah *Morning News* of that date that no tug had gone to the *Clandeboye*.

In the same paper of the preceding day there had been published a statement of the accident which had befallen the *Clandeboye* and her having drifted to an anchorage on the Bahama banks and of the danger in which she was. It was as follows:

"The names of the four men who arrived here from the disabled steamship are H. T. Hay, chief mate; William Hossack, carpenter; Thomas Donnelly and H. Halsing, seamen.

They were pretty well fatigued after their adventure of five days on the ocean in an open boat, and were glad to find a harbor.

"*Five Days at Sea.*

"The mate tells an interesting story of the accident to the steamship and the incidents connected with the adventure of the men in the small boat on the trip from Bahama here.

"'We left Cardiff April 1,' he said, 'with a cargo consisting of paint, fuel, and machinery, for Vera Cruz, and were about 170 miles northeast of Abaco light-house April 22, when the accident occurred. There is no way to account for the break-down, as nothing unusual had happened to warn us of any disarrangement in the machinery, and the weather was bright and fair. It came all of a sudden, and we were soon drifting at the mercy of the sea, with the tail-end of the shaft broken between the propeller and where it enters the ship. We could not get at it to make repairs, so we drifted around in hopes of sighting some passing steamer and signaling her for assistance.'

"*Drifting with the Currents.*

"'The trade winds and ocean currents carried us in every direction. One day we drifted fifty-four miles, another day forty miles, and so on. I have some curious accounts to give to the Hydrographic Bureau of the currents in that vicinity when I make my report to the office.

"'We finally sighted land last Wednesday and dropped anchor about a mile and a half on the northeast coast of the Little Bahama. It was decided that a boat be sent into Florida straits to seek assistance from some passing steamer. A lifeboat was lowered and manned by myself and three other men. We were provided with plenty of provisions and water and did not suffer for the want of something to eat and drink, although we took our meals under difficulties during our long and tedious trip.'

"*To Be Gone a Few Hours.*

"'We left the ship at 5 o'clock last Thursday morning, and expected to return with assistance in a few hours. We were disappointed, however, and night came on without

anything in sight. All that night we drifted about with no better success. The next day we were struck by frequent squalls, in one of which the mast step was torn away. We succeeded in repairing it, however, and the balance of the trip was devoid of accident. It rained nearly all the time and kept us busy baling the boat. We had considerable difficulty in keeping our provisions dry and preventing salt water from getting into the cask, as waves frequently broke over us.

"'The first vessel we sighted was a Norwegian bark, bound south. We signaled her, but she paid no attention to us. We still expected that some steamer would come in sight, but we were disappointed until Saturday night, when we saw the lights of a side-wheel steamer bearing down on us.

"'We attempted to make a light, and with some difficulty we finally got one lantern lit, but the steamer went by, although we were close under her bow. I suppose we were near the coast of Florida, and the steamer's skipper thought we were boys out on a fishing frolic.

"'We had lost our bearings by this time and could not have found our way back to the steamer if we wanted to, so we kept steering for the western shore. The wind was blowing from the southeast, and carried us at a brisk rate toward the Georgia coast. Fortunately we spoke the schooner *Raymond T. Maull*, from New York, bound to Brunswick or Tybee, on Monday, and from her we got our bearings and made for the inlet. We arrived inside Tybee bar this morning at 6 o'clock, where we found the tug *Cynthia*, which we boarded, and were brought to the city.'"

The same newspaper of the 17th, in a statement already mentioned, has said as follows:

"Mr. Hay, mate of the *Clandeboye*, who arrived here Tuesday in an open boat from the steamship, said yesterday that he was very anxious to get away to his ship, and could not understand why the owners were delaying in giving instructions to send her assistance. He says the ship might as well be on top of the Rocky mountains and expect another vessel to pass her by chance as to suppose that another steamer will loom up where she is anchored. She is out of the track of all traders, being on the northeast coast of the

Little Bahama, with coral reefs and rocks behind her and the ocean beating against her bow. A sudden gale or hurricane, both of which are frequent in that locality, might come with such force as to cause her to part her chains and wreck her on the rocks.

"Mr. Hay said that yesterday was the longest day he had ever spent, because he had nothing to do but sit and wait for the cable that never came. His experience in the open boat at sea did not equal the suspense."

Captain Lomm, having read these newspaper statements, and partly on the urgent advice of friends, made up his mind to go to the assistance of the steamship and took a supply of coal on the *Dauntless* with that object. Before leaving Brunswick he went to Coney and Parker, agents of the *Dauntless*, and informed them of his purpose. Mr. Coney, of the firm, thereupon telegraphed to Savannah to know whether the agents of the *Clandeboye* had yet engaged assistance for the steamer. He soon got the following reply:

"SAVANNAH, *May 17th*, 3.17 p. m.

"To E. F. CONEY, *Brunswick, Ga.:*

"Tug *Morse* of New York chartered to go to assistance of *Clandeboye*.

"WALTER CONEY."

Despite this telegram, Captain Lomm determined to go to the *Clandeboye*. The evidence shows that the *Morse*, which was a tug of the largest class, was then in Philadelphia, and that she did not reach the place of the *Clandeboye* until the morning of the 22d of May. The *Dauntless* left Brunswick after sundown on the 17th and reached the anchorage of the *Clandeboye* at about eleven o'clock a. m. on the 19th of May. The steamer was anchored in thirty fathoms of water, near Stranger's Cay channel, within two miles of and nearly north of the shoal at that point and of the breakers there, on a coral bottom that seems to have been more or less mud and rock. The steamer seems to have been held

partly by her anchor, but chiefly by the swoop of the very heavy chain cable, ninety fathoms in length, that went down from the vessel. The ship had been there for ten days, during which there had been no weather or sea to force or drag her anchor; but the log states that there was considerable strain on the cable.

The position was a very dangerous one, except in quiet weather, and was far off the track of vessels navigating the ocean outside. In his conference with Captain Lomm, of the tug, the steamship's master, Strickland, wished to be towed to Vera Cruz, which had been his port of destination; but he was informed that the *Dauntless* could not carry fuel for so long a voyage, and that the tug's insurance would be forfeited if she proceeded to the Gulf. He proposed to tow the steamer to Savannah or Brunswick, but it was soon agreed that they should proceed to Brunswick for a fresh supply of coal for the tug, and thence to Newport News, where ample facilities existed for replacing the broken shaft of the *Clandeboye*. In all their conference Captain Lomm had failed to inform Captain Strickland of the employment of the *Morse* by his agents to come to the help of the steamer. It was agreed between the two masters that the value of the services which should be rendered by the *Dauntless* should be fixed by arbitration at Newport News.

These matters having been settled, the steamship was taken in tow on Saturday afternoon of the 19th of May. They reached Tybee, off Brunswick, on the 22d, where the *Dauntless* coaled.

They then set out for Newport News and arrived there without accident on the afternoon of the 26th of May, just a week after leaving Stranger's Cay. They encountered some bad weather on the trip, attended by rough sea, which often threw the stern of the boat out of the water and caused racing of the propeller; but such weather prevailed for only a day or two and produced no accident. The service was entirely successful and meritorious.

Saving one question, to be discussed in the sequel, I think, on the evidence in the case, the compensation and bounty should be an aggregate of $10,000, at least $6,000 of which would have been due for the service merely as towage.

The saved ship was thoroughly disabled and helpless. She was in a position not only of danger from the sea, which any high wind might produce at any moment, but also from the wreckers who inhabit those dangerous banks and make a living off of distressed shipping driven upon them. The interest of these wreckers was not to help, but to let the stranded steamer go to wreck and ruin.

The case, therefore, would be perfectly clear for the reward I have indicated but for the omission of Captain Lomm to inform Captain Strickland, before taking his ship in tow, that the agents of his ship in Savannah had employed the powerful tug *Morse*, of New York, to repair to Bahama banks to his relief.

Whether or not the right of Captain Lomm to a salvage reward was forfeited by his silence on the subject of the employment of the *Morse*, in his conference at the Little Bahama banks with Captain Strickland, is the question on which the case depends. There is no doubt that Captain Lomm ought to have given this information to Captain Strickland. The question is, whether his obligation to do so was so stringent as to constitute the omission a fraudulent piece of deception.

The testimony shows that in point of fact the *Morse* was in Philadelphia at the time her services were engaged by the *Clandeboye's* agents in Savannah; but Captain Lomm did not know this, and the telegram shown him by Coney implied that the *Morse* was in New York. This fact, however, was of little importance, for practically Philadelphia was as far from the Bahamas as New York. The latter city was more than a thousand miles, as ships run, from the Stranger's Cay, where the *Clandeboye* was lying. Brunswick

was about a third of the distance off. The *Dauntless*, which was a very fast boat, reached the *Clandeboye* on the morning of the 19th of May, and left there, with the *Clandeboye* in tow, on the same day.

The *Morse* did not reach the place where the *Clandeboye* had been until the morning of the 22d of May, six days after she had been employed for the service and four days after the *Dauntless* had left with her tow, during which heavy winds and seas had prevailed for about two days.

Ten days before the arrival of the *Dauntless* at Stranger's Cay inlet Captain Strickland had sent his mate off to look out for passing ships that might come to his assistance, and, failing to find them, to go to Savannah for the same purpose. The first thing that Captain Lomm told him when they met was that the mate had arrived at Savannah and had taken steps to obtain assistance. Captain Strickland knew that within the three days between the 16th and 19th of May the mate and the steamer's agents in Savannah had been addressing themselves to that task, and the inference was practically certain that they had actually engaged and provided assistance for them. The information possessed by Captain Lomm that a tug had been engaged from New York was only a designation of the particular vessel engaged; it was no more. As a man of business, Captain Strickland knew that some vessel had been engaged, and that the *Morse*, whose character and capacity were unknown to him, was that vessel could not affect his decision on the question whether or not to avail himself of the assistance already at hand. Captain Strickland himself testifies on this head as follows:

"Q. Why did you accept his services; didn't you suppose the mate would send some one? A. I knew he would; but in the meantime the ship was lying there eating her head off.

"Q. Didn't you think it possible that some other tug might come along in the course of a day or two? A. I ex-

pected them to come from all quarters, but it was a sort of first come first served.

"Q. What would be the effect after one had come? A. I expect after we had gone the place was flooded with tugs."

He knew that assistance had by the 19th been engaged. He believed that he would be surrounded by a swarm of vessels offering assistance. He looked upon it as a case of first come first served. He told Captain Lomm so, and gave him to understand that, no matter what vessel had been specifically engaged by his owner's agents in Savannah, he would accept the first one that offered.

I cannot see, therefore, that Captain Lomm's omission to tell him what vessel had been engaged—a vessel, too, that was to steam all the way from New York, a thousand miles off, to the reefs on which he lay—involved a fraudulent deception. I do not see any moral turpitude in Captain Lomm's not volunteering to tell Captain Strickland what particular vessel had been engaged by his agents in Savannah. Positive and actual fraud is necessary to work a forfeiture of the salvage award.

"Where success is finally obtained, no mere mistake or error of judgment in the manner of procuring it, no misconduct short of that which is willful and may be considered criminal, and that proved beyond a reasonable doubt by the owner's resisting the claim, will work an entire forfeiture of salvage. Mistake or misconduct, other than criminal, which diminishes the value of the property salved or occasions expense to the owners, are properly considered in the amount of compensation to be awarded. Willful or criminal misconduct may work an entire forfeiture of it, but that must be proved by those who dispute it."

Jones on the Law of Salvage, p. 125.

Other questions in this case are discussed elaborately in the briefs of the respective counsel. I do not feel it to be necessary for me to review them or to set out testimony on which they arise. I repeat the opinion that the service

performed by the libellant was rendered with spirit and promptitude, was meritorious, and ought to be not only compensated on the basis of *quantum meruit*, but rewarded by a bounty.

I will decree $10,000.

UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT.

W. H. STRICKLAND, *Master of the Steamship "Clandeboye" Claimant, Appellant,*
vs.
LEO LOMM, *Master Steamtug "Dauntless," Libelant, Appellee.*
No. 130.

Appeal from the district court for the eastern district of Virginia, at Norfolk.

[Argued June 5, 1895; decided November 7, 1895.]

Before Goff and Simonton, circuit judges; Seymour, district judge.

Wilhelmus Mynderse, of Butler, Stillman & Hubbard, Floyd Hughes, for appellant; Robert M. Hughes, for appellee.

Opinion.

SEYMOUR, *J.*:

The material facts of the case are as follows: The *Clandeboye*, a large and valuable British steamer, had become disabled by breakage of machinery, and had arrived off the Little Bahama islands. Her mate had been sent by a ship's boat for assistance, and had on the 15th of May, 1894, arrived at Savannah. In pursuance of telegraphic instructions cabled to him by the owners he had engaged the services of the *Morse*, of New York, then, however, lying at the port of Philadelphia, which had agreed to proceed forthwith to the Little Bahamas and tow the *Clandeboye* to Vera Cruz, her port of destination, for the sum of $5,000. Leo Lomm (the libelant), part owner and master of the tug *Dauntless*, lying at the time at its home port of Bruns-

wick, Georgia, having learned from the Savannah papers of the arrival at that port of the mate of the *Clandeboye* and of the condition and location of that vessel, on the 17th of May telegraphed, through his agents, to Savannah, and received a reply stating that the tug *Morse*, of New York, had been chartered to go to the assistance of the *Clandeboye*. The distance from New York (and that from Philadelphia is about the same) to Stranger's Cay, where the *Clandeboye* was lying, is more than a thousand miles. From Brunswick the distance is about one-third as great. Captain Lomm's boat was lying idle. He concluded that he could beat the *Morse* in a race to the *Clandeboye*, and that, the master of the latter not knowing of the employment of the *Morse*, he could obtain a profitable job of salvage. The telegram announcing the employment of the *Morse* by the *Clandeboye's* owners reached Brunswick at a little after 3 p. m. of the 17th. Shortly after dark of the same day the *Dauntless* started for the Bahamas. She arrived at Stranger's Cay before noon of the 19th. Her master had the interview and made with the master of the *Clandeboye* the contract, which is a matter in litigation, immediately thereafter, and in a couple of hours the vessels left for Newport News, one in tow of the other. Between three and four days afterwards the *Morse* reached the spot where the *Clandeboye* had been lying at anchor to find that she had gone.

The conversation between the masters of the steamer and of the tug at Stranger's Cay contains the contract entered into between them and the words that lead up to it. Captain Strickland's testimony upon the subject is as follows:

"Q. What time did the *Dauntless* come along? A. About 12.30.

"Q. And the captain came aboard? A. Yes, sir.

"Q. Who came with him? A. A man he has got with him as navigator. The captain is no navigator, and he brought a man specially with him.

"Q. What did he do when he came aboard? A. Went down to the cabin.

"Q. What did you do then? A. I asked him what he would tow the ship to Vera Cruz for, but he said he couldn't go there at any price; said he had no papers, for one thing, and that if he went his ship would be confiscated. I asked where he would tow us, and he said Nassau. I

knew there was no way to dock her at Nassau, and he had no coals to take her anywhere else, and I arranged to tow her to Brunswick, so he could get coals, and after that to Newport News.

"Q. Might you not have coaled him out of your own bunkers? A. Yes, sir; I offered to.

"Q. What objection was made to that? A. Didn't make them, sir, except he wouldn't have them. I suppose he thought I would charge him for them.

"Q. Just state, more in detail, what your conversation was. A. That's as near as I can remember. I asked what he would tow the ship to Newport News for, and he said wherever he towed her we had better not make any arrangement; it had better be let to the owners, to be settled by arbitration. He wouldn't make any bargain at all.

"Q. Did he say anything as to how he ascertained you were there or anything about your mate or boat's crew? A. Yes; he said he had seen in a Savannah paper that the boat had arrived in Savannah, and on the strength of that he came out. He reported to me that the boat and crew were all right.

"Q. Did he tell you that the owners of the *Clandeboye* had engaged a tug to come for you? A. No, sir.

"Q. Did he say anything more respecting the mate and his crew beyond the fact that the papers said they had arrived? A. That was all, sir.

"Q. He gave you no information that the owners were seeking assistance to come for you? A. No, sir."

Captain Lomm's testimony is:

"Q. Relate the conversation that occurred between you and him. A. When I got aboard the steamship—I and Captain Curtis—we were met by the captain, who says, 'Come down below,' meaning in the cabin, of course; and as we were going along the deck the captain says, 'Did you hear anything of my mate and boat?' and I said, 'Yes, sir; he is in Savannah,' and the captain turned round and told the men the mate is all right. 'The mate and boat is all right,' he said, 'tell that to the balance of the crew of the ship.' We went down below, in the cabin, and after we got down there the captain said, 'You say the mate is in Savannah?' and I said, 'Yes, sir.' He says, 'Did the mate

send you?' and I said, 'No, sir.' He said, 'What brought you here?' I told him I had seen, in the Savannah *Morning News*, where his mate and boat had arrived in Savannah and wanted assistance; that the ship was disabled, and that she was on Bahama banks, and then he said, 'You came on a spec.?' Then I said, 'Yes, sir.' So he told me he was offered assistance yesterday, and I said, 'By a steamer?' and he said, 'No, sir; these schooners round here came here yesterday and wanted me to get up my anchor and said they would tow me in, but I knew they wanted nothing else but to get my anchor off the bottom and drift ashore, so that they could get a chance to wreck my steamer; but,' he says, 'I expect a tug in a day or two,' as he had engaged a schooner or two to go to Nassau, with a cable, and also to Jacksonville to get tugs for him. 'So,' he said, 'this is one of the cases, "first come, first served."' Then we were talking about where he wanted to go and he said he wanted to go to Vera Cruz, and I said I could not tow him to Vera Cruz. He wanted to know the reason, and I told him in the first place I couldn't carry coal enough to carry us to Vera Cruz; then, again, I was not insured anywhere except the Atlantic, and then, again, it was in a foreign port and a Spanish port besides, and I suggested to tow him to Brunswick or Savannah, and he said he couldn't do anything there, as they had to go in the dry-dock to be repaired. Then I told him Norfolk or Newport News is the best place I know of, and he said, 'Yes; I know they have got a good dry-dock in Newport News,' and then it was agreed to tow him to Newport News."

The material facts in the testimony quoted are that Captain Lomm told Captain Strickland of the arrival of his mate in Savannah, but did not tell him of the employment of the *Morse* for his relief.

The result of the enterprise of Captain Lomm will be disastrous to the owners of the *Clandeboye* if the decree of the district court is allowed to stand. Captain Lomm declined to take the *Clandeboye* to Vera Cruz, the port to which her cargo was consigned, and did tow her to Newport News, where she was repaired. Fifteen hundred tons of her cargo had to be unloaded and then reloaded before she proceeded to Vera Cruz. Her owners were compelled to pay to the owners of the *Morse* the sum of $1,900 for the services of

that tug, and salvage compensation amounting to $10,000, double what the *Morse* had agreed to charge for towing the *Clandeboye* to Vera Cruz, has been awarded to the *Dauntless*. But the master of the steamship, in charge of his vessel and not in communication with his owners, was fully empowered to contract with the owners of the *Dauntless*. The contract made was binding unless invalidated by the conduct of Captain Lomm in concealing the fact that the owners of the *Clandeboye* had engaged the services of the *Morse*. As is said by the judge in the court below:

"Whether or not the right of Captain Lomm to a salvage reward was forfeited by his silence on the subject of the employment of the *Morse* in his conferences at the Little Bahama banks with Captain Strickland is the question on which this case depends. There is no doubt that Captain Lomm ought to have given this information to Captain Strickland. The question is whether his obligation to do so was so stringent as to constitute the omission a fraudulent piece of deception."

While the right to salvage does not necessarily always arise out of an actual contract, it does so in the case at bar. Services spontaneously rendered to vessels wrecked or, under the conditions of an earlier period, set upon by pirates or attacked by enemies or captured and rescued, are recompensed with salvage money, whether the services were or were not requested. The present case, however, is one of a different character. The *Clandeboye*, at anchor off the Bahamas, though disabled and in a position of contingent peril, was not wrecked. She had remained eleven days without injury where she then was, and was under the plenary control of her master, who was at full liberty to accept or refuse the services of the *Dauntless*. The arrangement entered into between the two masters constituted a contract and is subject to the principles which regulate the validity of contracts. If valid, the courts of admiralty are bound to enforce it; if not, to set it aside, in accordance with the general rules affecting all contracts. The law of contracts requires of the parties to them mutual good faith. Is there any principle of mercantile law by which that obligation to good faith which required Captain Lomm to inform Captain Strickland of the hiring of the *Morse* is relaxed and is not of so stringent a force as to make the

omission fraudulent? If there is, it must be sought in the analogies of the rule of *caveat emptor*.

The doctrine of *caveat emptor* belongs, strictly speaking, to the law of sales, but its principles apply to other contracts; nor is it a doctrine peculiar to the common law. It is in force in all mercantile communities and has always been administered under the civil law. Pothier says, speaking of the contract of sale: "Good faith prohibits not only falsehood, but all suppression of everything which he with whom we contract has an interest in knowing touching the thing which makes the object of the contract;" but he adds, speaking of contracts where one party has not revealed all his information to the other, "the interest of commerce" does not permit "parties to be readily admitted to demand a dissolution of bargains which have been concluded. They must impute it to themselves in not being better informed." Pothier, Contract of Sale, pt. II, ch. II, §§ 234, 239.

In the case of *Lardlow v. Organ* Chief Justice Marshall says: "The question in this case is whether the intelligence of extrinsic circumstances which might influence the price of the commodity and which was exclusively within the knowledge of the vendee ought to have been communicated by him to the vendor. The court is of the opinion that he was not bound to communicate it. It would be difficult to circumscribe the contrary doctrine within proper limits where the means of intelligence are equally accessible to both parties." *Lardlow v. Organ*, 2 Wheat., 178. "Under the general doctrine of *caveat emptor* the vendor is not ordinarily bound to disclose every defect of which he may be cognizant, although his silence may operate virtually to deceive the vendee." Story on Contracts, § 516. "The general rule both of law and equity in respect to concealments," says Lord Thurlow, "is that mere silence with regard to a material fact which there is no obligation to divulge will not avoid a contract. Thus, if A, knowing that there is a mine in the land of B, of which B is ignorant, should contract to purchase the land without divulging the fact, it would be a valid contract, although the land were sold at a price which it would be worth without the mine, because A is under no legal obligation by the nature of the contract to give any information thereof." *Fox v. Mackreath*, Leading Cases in Equity.

"Without some such general rule the facilities of sale

would be greatly impeded and there would be no security to the vendor" (or to the vendee). Story on Contracts, § 517.

It will be noticed that the general rule of law is a requirement of good faith in mutual dealings, and that the doctrine of *caveat emptor* is an exception to such requirement founded upon special reasons, viz., the necessities of commerce and the impossibility of so limiting any other doctrine as to do justice. As Chief Justice Marshall says, "It would be difficult to circumscribe the contrary doctrine within proper limits." The necessities of commerce require that enterprise should be encouraged by at least allowing diligence its due reward and not interfering with any proper and reasonably fair competition for intelligence. Any other course would set the active and the slothful upon an equality. *Vigilantibus non dormentibus jura subvenient.*

Even more weighty is the second reason given in support of the doctrine. The law works with blunt tools. Fallible memories, prejudiced statements, intentional falsehood, the bias of self-interest, ignorance, and stupidity, are all concomitants of much of the testimony from which she has to make up her judgments. General rules applicable to the majority of cases, but sometimes having an oppressive bearing upon particular ones, make up the principles upon which of necessity she founds her decisions; for the law must be workable. It must be comprehensible to men who live under its rule, and must not be so complex as to overburden the memory with minutiæ. Farther, were it open in all cases of contracts for a dissatisfied party to cry off by saying that the other party had known better than he the value of the subject-matter or the market price or some other extrinsic circumstance there would be no finality in human dealings, and the only limitation to the litigation that would ensue would be that imposed by the diminution of business caused by such want of finality and certainty.

But *caveat emptor* is but the exception and not the rule. Its operation is to be diligently circumscribed within proper limits. The doctrine is not applied (1) to cases of active fraud, one variety of which consists in misrepresentation of facts, including what is often equivalent, partial statements. It is not applied (2) to cases in which trust is implied by reason either of the relations to one another of the parties or the nature of the contract, nor (3) to cases in which in

the absence of *laches* in the party injured the persons dealing with one another do not deal upon mutually equal terms by reason of there being special knowledge in the possession of one party which is inaccessible to the other.

1. The case of actual or implied misrepresentation needs no illustration.

2. That of trust includes all the known fiduciary relations, such as those of attorney and client, guardian and ward, agent and principal, and generally of all who stand in the relation of trustee and *cestui que trust*. It also includes dealings with regard to all matters which from their nature demand mutual confidence. One seeking insurance is bound to state all facts within his knowledge which would have an influence on the terms of the contract, but are unknown to the insurer. A vendor of goods is bound to point out any latent defect in them known to himself. A person selling negotiable paper warrants that he has no knowledge of any facts which prove it worthless. It is held that if one sells to another a check of a third party, knowing that other checks of the same party have been recently dishonored without communicating the fact to the buyer, it is a fraudulent concealment. *Brown vs. Montgomery*, 20 N. Y., 287.

3. The case of information possessed by one party and absolutely unobtainable by the other, though of rarer occurrence, is one in which the enforcement of the rule of good faith is fully as imperative as it is in the two classes of cases first mentioned. It is, perhaps, not properly an exception to the doctrine of *caveat emptor*, but rather a case outside of its terms. The *purchaser* cannot *look out* for what he cannot have knowledge of. It is thus stated by Chancellor Kent in his commentaries: "If there be an intentional concealment or suppression of material facts in the making of a contract in cases in which both parties have not equal access to the means of information it will be deemed unfair dealing and will vitiate and avoid the contract." Kent's Com. Lect. XXXIX, vol. 2, * 482. It is implied in Judge Marshall's opinion in *Lardlow vs. Organ*, already cited, in the sentence ending with the words "where the means of intelligence are equally accessible to both parties." *Supra*. Under this exception, more logically than under that of special confidence, where it is generally placed in the text books, comes the obligation of one who has man-

ufactured goods to reveal to a purchaser any latent defect in them known to himself, and the similar obligation of a vendor of real estate to inform a vendee of all incumbrances placed by himself upon the land. Where one party to a contract has information inaccessible to the other neither of the reasons assigned for the principle of *caveat emptor* apply. The contract is not one which should be sustained to encourage mercantile competition and diligence, for where knowledge cannot be obtained competition is impossible and diligence useless. There can be no vigilance to be rewarded or sloth to be discouraged; nor would much danger of unsettling the finality of business transactions or of opening bargains to the uncertainties of conflicting testimony about the equality of knowledge of the parties be likely to arise by reason of the invalidating of contracts for this cause.

The case at bar is the first of the kind that has come before a court of admiralty, but it is as striking a one as could be imagined or invented. It is one in which one party to the bargain has knowledge of a fact which, if known to the other, would have prevented the making of the contract. The ignorance of the fact on the part of the second party is one which cannot be made a subject of controversy, and this ignorance was known to the party suing upon the contract. To give him the benefit of it to the injury of the claimants would be, in our opinion, a startling violation of the fundamental principle of all law, that equity is equality.

We think that the agreement between the masters of the two vessels, made in the case at bar, is infected with all three of the vices just stated, and is therefore not within the doctrine of *caveat emptor*. It must therefore be declared void under the principle that requires good faith in mutual dealings.

(1.) Without placing as much stress upon the point as upon the other two, we yet think it may be fairly held that in telling a part, but not the whole, of the truth to Captain Strickland, Captain Lomm was guilty of that *suppresio veris* which the law calls fraud. By this concealment he induced the former to make a contract which was contrary to the wishes and intents of his owners who had already made with another a more favorable bargain; a contract that he would not have made had the facts been fully disclosed.

(2.) The relation of salvor and saved, while not one of

the fiduciary relations generally referred to in the law books and accurately defined as well as classified, is yet a fiduciary one. This will be readily apparent when we remember that in a large number of cases of salvage, particularly the earlier ones, the salvor has actually been in possession of the property saved, holding it for the lien which maritime law gives, and liable as trustee to the owner after the receipt of salvage. Besides this reason, another is to be found in the special confidence resulting from the very nature of the services rendered. We think special confidence as much belongs to the relation between salvor and saved as to that between insurer and insured.

(3.) Were the other reasons of declaring the contract void absent, we should unhesitatingly do so on the third ground, viz., because the parties were not dealing on terms of equality. There was on the part of Captain Lomm an intentional suppression of a material fact in relation to which he was informed, while Captain Strickland had not access to any means of obtaining information of it. Looking at the position of the two parties to the bargain from another point of view, there appears to have been a striking inequality between them. The master of the *Clandeboye* had, when the *Dauntless* arrived at Stranger's Cay, been for nearly four weeks in a disabled vessel. He had lain helpless at his anchorage for eleven days; his only assistant, who was a navigator, the mate of the vessel, was absent, and he was alone in authority over the *Clandeboye*. He was suffering from the pressure of anxiety, responsibility, and delay. The master of the *Dauntless*, aware of all the circumstances, intent solely upon gain, fresh from home, with a mind disengaged and at ease, had an unfair advantage over him. In the short period during which he considered and agreed to accept the services proffered to him, Captain Strickland can hardly be supposed to have had the time or grasp of the facts that would have enabled him to have drawn all the inferences from the fact of his mate's opportunities in Savannah that have been imagined by counsel. During that hurried interview between the masters of the two vessels it doubtless confusedly occurred to the master of the *Clandeboye* that his mate was trying to do something for him, and that tugs would be at hand in a short time prepared to tow him somewhere; probably he thought of the nearest ports. His conversation shows that thoughts of this kind were in his mind. He was

anxious to get away, and with the words "first come, first served,' he made terms with Captain Lomm, whose tug had arrived first; but it would be unjust to suppose that he expected or had in his mind any thought of the possible existence of what was actually the fact, viz., a contract under which a powerful tug had been employed by his owners to tow him to the place to which he desired to be taken—Vera Cruz—and was already on the way to Stranger's Cay, near the Little Bahamas, where he was lying. We see no reason to doubt his statement that if he had known of the employment of the *Morse* he would not have employed the *Dauntless*. The parties were not dealing on equal terms, and their contract cannot be enforced.

While, however, the contract must be set aside, it does not necessarily follow that the libelant is entitled to no compensation. The question remains of what, if anything, the *Dauntless* is entitled to for any net benefit actually received by the *Clandeboye* from her services. It would be inequitable to allow the latter to refuse to pay for anything of use actually received by her. Nor do we wish to extend to a new case the exaction of penalties in civil actions.

In the actual condition and position of the *Clandeboye* when taken in tow by the *Dauntless* she needed two things—repairs and the opportunity of taking her cargo to Vera Cruz. If Captain Lomm had not interfered she would have been towed to Vera Cruz by the *Morse* at an expense, including cost of taking her mate and three seamen from Tybee, of $5,200. Upon arriving at Vera Cruz she could have discharged herself of her cargo, but could not have been repaired owing to the fact that there are no facilities there for docking vessels. It would therefore have been necessary to have taken her to some port possessed of such facilities. New Orleans, Pensacola, and Newport News have been suggested. The former places are nearer Vera Cruz than Newport News, but the latter is understood to have very superior facilities of the kind needed. The *Dauntless* rendered a real service to the *Clandeboye* in towing her to Newport News where she could be docked. After being repaired it became possible for her to proceed to Vera Cruz under her own steam; but it seems probable from the testimony that had she been towed to Vera Cruz in the first instance she would have been compelled to take a tug in her journey to a dry dock. This expense she has been saved. In addition to

this, she was saved by the *Dauntless* from the perils of a four days' longer stay at her anchorage. On the other hand, at Newport News, she was put to the expense of unloading and reloading fifteen hundred tons of her cargo, which is stated by Captain Strickland to have been $1,200. The captain also states that the time occupied was sixteen days, and estimates demurrage at £45 per day. From this demurrage there ought to be deducted the four days' time saved her by the *Dauntless* in taking her from Stranger's Cay before the arrival of the *Morse*. I suppose, too, that the demurrage is estimated at charter-party rates and is excessive. I should be disposed to allow $1,700 for it. The amount lost to the owners of the *Clandeboye* by their obligations to the owners of the *Morse* was $1,900. The total on this side, as I estimate it, would be $4,800, besides costs of steaming from Newport News to Vera Cruz. Against this is the saving of the $5,200 which was to have been paid for the services of the *Morse*, the cost of taking the *Clandeboye* from Vera Cruz to a port with docking facilities, which would have been necessary had she been towed to Vera Cruz before being repaired, and the benefit to her of her earlier rescue from the perils of her position on the coast of the Little Bahamas.

On the whole the court allows one thousand dollars as the net gain to the owners of the *Clandeboye* for the services of the *Dauntless*.

Decree modified and rendered in favor of the libelant in the sum of one thousand dollars.

GOFF, *Circuit Judge:*

I agree with the court that the agreement made by the masters of the *Clandeboye* and the *Dauntless* must, under the circumstances shown to have existed at the time it was entered into, be declared void, and that it cannot be enforced in a court of admiralty. I do not concur in that part of the opinion that allows the libelant compensation for the services rendered by the *Dauntless*, undertaken as they were in bad faith, with a fraudulent purpose and the intention of suppressing the truth, thereby taking advantage of a vessel, if not in danger, at least in distress, and causing its owners an additional and unnecessary expense. In a case of this character a court of admiralty is a court of equity,

and a party who asks its aid must come before it with clean hands and with such facts as will *ex æquo et bono* show a case proper for its interposition. If the salvors have been guilty of misconduct or of negligence, or have been in collusion with the master, or have attempted to take advantage of the unfortunate, they have thereby forfeited all claim for compensation even for services actually rendered. *The Boston*, 1 Sumner, 328, Fed. Cases, 1673; *The Byron*, 5 Adm. Rec., 248, Fed. Cases, 2275; *The Lady Worsley*, 2 Spinks, 253; *The Bello Corrunes*, 6 Wheat., 152; Marvin on Wreck and Salvage, sec. 222; Jones on Salvage, 124; Cohen's Adm. Law, 171.

The undisputed facts of this case show it to be, at least, most peculiar, the books containing nothing similar to it, and in my judgment the courts should not aid in duplicating it by tolerating such litigation. I think that the decree of the district court should be reversed and the cause remanded with directions that the libel be dismissed and that the claimant recover all costs.

SUPREME COURT OF THE UNITED STATES.

To WILLIAM H. STRICKLAND,
Master and Claimant of the Steamship Clandehaye:

Take notice that on Monday, April 13, 1896, I will file a petition in the Supreme Court of the United States to bring up on certiorari from the circuit court of appeals for the fourth circuit the record in the suit of William H. Strickland, master and claimant, appellant, against Leo Lomm, master, appellee, for the purpose of having the same reviewed and reversed.

A copy of said petition is hereto annexed.

LEO LOMM, *Master*,
By ROBERT M. HUGHES, *Proctor*.

Service accepted.
FLOYD HUGHES,
Of Counsel for Strickland, Master.

MARCH 19, 1896.

Office Supreme Court U. S.
FILED
APR 15 1896
JAMES H. MCKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

No. ~~150~~ 945.

WILLIAM H. STRICKLAND, master and claimant of the steamer Clandeboye, her cargo and freight,

against

LEO LOMM, master of the steam-tug Dauntless,
Libellant and Petitioner.

Brief in opposition to the Petitioner.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
WILHELMUS MYNDERSE,
For Strickland.

Office Supreme Court U. S.
APR 15 1896
JAMES H. MCKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

No. ~~130~~ 945.

WILLIAM H. STRICKLAND, master and claimant of the steamer Clandeboye, her cargo and freight,

against

LEO LOMM, master of the steam-tug Dauntless,
Libellant and Petitioner.

Brief in opposition to the Petitioner.

BUTLER, NOTMAN, JOLINE & MYNDERSE,
WILHELMUS MYNDERSE,
For Strickland.

Supreme Court of the United States.

WILLIAM H. STRICKLAND, master of the steamer CLANDEBOYE, *Appellant*, AGAINST LEO LOMM, master of the steam-tug DAUNTLESS, *Libellant*.	October Term, 1895. No. 945.

Brief in Opposition to Libellant's Petition for a Writ of Certiorari.

The libellant, Leo Lomm, has filed a petition that a writ of *certiorari* issue to the United States Circuit Court of Appeals for the Fourth Circuit, to the end that a decree of that Court reversing a decree of the District Court of the United States for the Eastern District of Virginia in the above-entitled action may be reviewed.

Statement of Facts.

The libel herein was filed May 28, 1894, by Leo Lomm, as master of the steam-tug *Dauntless*, to recover salvage compensation for services rendered to the steamer *Clandeboye* and her cargo in May, 1894 *(Libel, pp. 1-6)*. The alleged services were in towing the *Clandeboye* from an anchorage on the Bahama Banks to Newport News.

The *Clandeboye*, a British steamer, while bound on a voyage from Cardiff, Wales, to Vera Cruz, with a cargo consisting

chiefly of patent fuel, met with an accident on April 22, 1894, in latitude 26° 38′ north, longitude 74° 37′ west, which disabled her machinery. Investigation showed that the "tail end of the shaft was "broken inside the stern tube" (*Engineer's Log, p. 72; Robinson, p. 13; Strickland, p. 52*). The steamer hadon board an extra tail shaft, but the injury could not be repaired at sea and the machinery of the steamer was, therefore, entirely useless for the purposes of navigation.

She was, however, in all other respects apparently sound and tight; she had a good and sufficient crew and was amply provisioned.

Her sail power was not sufficient for efficient navigation, but by the use of sails and of sea anchors, she was able, to some extent, to control her drift and brought herself to an anchorage May 9th, to the northward of Strangers Cay, one of the Bahama Islands (*Strickland, pp. 52, 53; Log, pp. 79–96*). The day after reaching the anchorage the master dispatched his chief officer with three men in a small boat to look for assistance (*Strickland, p. 54*). These men reached Savannah May 15th and at once reported to Minis & Co., who had acted as agents for the owners of the *Claudeboye* on other occasions (*Hay, p. 31; Harris, p. 128*).

Immediate cable communication was had with Carlisle & Co., and Carlisle & Co. then definitely appointed Minis & Co. to act as their agents (*Harris, p. 128*).

On the morning of May 16th an account of the arrival of the mate and of the circumstances under which he left the *Claudeboye* was printed in the *Savannah Morning News* (*Exhibit C, pp. 169–172*). It announced that Minis & Co. were the agents of the steamer, and that they had been instructed by the owners of the steamer to procure assistance for her. This article was read by captain Lomm, the libellant, the same day (*Lomm, p. 163*). On May 16th Minis & Co. received instructions from the owners of the steamer to secure bids from tugboats to go to the assistance of the *Claudeboye* (*Harris, p. 129*). On the morning of May 17th the fact was published in the *News* that propositions had been made for assistance by the leading tugboat companies along the coast; that these propositions had been submitted by Minis & Co. to Carlisle & Co., and that Minis & Co. were awaiting instructions from

Carlisle & Co. as to which bid should be accepted *(Exhibit B, p. 168)*. The exact language of the article was as follows:

"J. F. Minis & Co., agents for the steamship, have re-
"ceived estimates for sending tugs to her assistance from all
"the towboat companies along the coast, and have submitted
"the prices to Carlisle & Co., the *Clandeboye's* owners, at
"London. Up to late last night no answer had been received,
"but it is expected that instructions will be here this morning"
(Exhibit B, p. 168).

This article was read by captain Lomm, the libellant, before noon of the 17th *(Lomm, pp. 162, 163)*.

He thereupon formed the plan of going out himself to the *Clandeboye*. The expenses of the trip would not exceed $200 and he stood the chance of finding other employment even if he missed the *Clandeboye (Lomm, p. 174)*.

Before the tug started, Coney & Parker, of Brunswick, the agents and part owners of the *Dauntless*, telegraphed to Walter Coney, of Savannah, requesting him to find out whether in the meantime any tug had already actually left *(Lomm, p. 164)*.

This was done privately, and the reply came from Walter Coney that the tug *Morse* of New York had been chartered to go to the *Clandeboye (Tupper, pp. 139, 140)*. Captain Lomm admits seeing this telegram before he left Brunswick *(Lomm, p. 65)*, and a copy of the telegram has been put in evidence *(Exhibit 3, p. 172)*. The language of the telegram is:

"Tug *Morse* of New York chartered go to assistance
"*Clandeboye*."

The word "chartered" must have indicated to the libellant that the owners of the *Clandeboye* had incurred liabilities in employing the *Morse* and gave warning to him that by interfering with the *Clandeboye* he was subjecting her owners to damage.

The *Dauntless* then, thinking that she was ahead of the *Morse*, started out without communicating in any way with Minis & Co., the steamer's agents. Minis & Co. knew nothing of her going out till several days late *(Harris, p. 132)*.

Upon arriving alongside the *Clandeboye* the master of the *Dauntless* reported to captain Strickland that his mate and men had arrived in Savannah, and that on the strength of their reports he had come out.

He did not tell captain Strickland that the owners of the *Clandeboye* had engaged a tug to go for him, nor did he say anything more respecting the mate and his crew beyond the fact that the newspapers reported their arrival *(Strickland, pp. 58, 59)*. Captain Strickland well characterizes Lomm's action as deceit. He is asked:

"Q. Now, suppose the *Dauntless* did, in fact, know that "your owners had engaged a tug to go out for you, then what "would you call it? A. It was deception."
Strickland, p. 67.

It was almost unnecessary for Strickland to testify the way he did on pages 59 and 60:

"Q. If you had known at that time that the owners had "employed a tug on the 17th, and that the tug *Morse* had left "to come for you under such employment, would you have "taken the *Dauntless*? A. Certainly not.
"Q. The master of the *Dauntless* did not advise you of that "fact? A. No, sir."

Under these circumstances, the *Dauntless* took hold of the *Clandeboye* and towed her to Newport News. There she was compelled to discharge a large part of her cargo in order to effect repairs, after which she reloaded the cargo and resumed her voyage to Vera Cruz.

The *Morse* had been chartered to take the *Clandeboye* direct from her anchorage to Vera Cruz, her port of destination, for a compensation of $5,000 *(Harris, p. 130; Morse, pp. 118, 119)*.

ARGUMENT.

The District Judge and all the Judges of the Circuit Court of Appeals are agreed that captain Lomm should have informed captain Strickland that the *Morse* was on her way under charter to assist him.

They differ only as to how far his failure to do what he should have done must affect his compensation.

The learned District Judge says:

"There is no doubt that captain Lomm ought to have "given this information to captain Strickland" *(Opinion, p. 179)*.

He reached the conclusion, however, that captain Lomm's omission did not "involve a fraudulent deception" *(Opinion, p. 181)*. He gave to the libellant a decree for $10,000 with interest and costs *(Deen, p. 182)*.

Judge SEYMOUR in the United States Circuit Court of Appeals, with Circuit Judge SIMONTON concurring, held:

"FIRST. That in telling a part, but not the whole of the "truth to captain Strickland, captain Lomm was guilty of "that *suppressio veris* which the law calls fraud. By this con-"cealment he induced the former to make a contract which "was contrary to the wishes and intentions of his owners, who "had already made a more favorable bargain with another—a "contract that he would not have made had the facts been "fully disclosed.

"SECOND. The relation of salvor and saved, while not one of "the fiduciary relations generally referred to in the law books, "and accurately defined as well as classified, is yet a fiduciary "one. * * * We think special confidence as much belongs "to the relation between salvor and saved as to that between "insurer and insured.

"THIRD. Were the other reasons for declaring the con-"tract void absent, we should unhesitatingly do so on the third "ground, to wit, because the parties were not dealing on terms "of equality. There was on the part of captain Lomm an in-"tentional suppression of a material fact in relation to which "he was informed, while captain Strickland had not access to "any means of obtaining information of it. * * * We see "no reason to doubt his (Strickland's) statement that if he "had known of the employment of the *Morse* he would not "have employed the *Dauntless*. The parties were not dealing "on equal terms, and their contract could not be enforced" *(Opinion, Appendix to Petition, pp. 28, 29)*.

The Circuit Court of Appeals, however, by a majority of the Judges, held that, while the contract must be set aside, it need not follow that the libellant should receive no compensation. They, therefore, stated an account of the benefits accruing and damages sustained by the *Claudeboye* through the interference of the *Dauntless*, and gave a decree to the *Dauntless* for $1,000.

Circuit Judge GOFF, not concurring in such an allowance, said:

"I agree with the Court that the agreement made by the mas-"ters of the *Claudeboye* and *Dauntless* must, under the cir-

"cumstances shown to have existed at the time it was entered "into, be declared to be void; and that it cannot be enforced "in a court of admiralty. I do not concur in that part of the "opinion that allows the the libellant compensation for ser- "vices rendered by the *Dauntless*, undertaken as they were in "bad faith, with a fraudulent purpose, and the intention of sup- "pressing the truth, thereby taking advantage of a vessel, "if not in danger, or at least in distress, and causing the owners "an additional and unnecessay expense. In a case of this "character, a court of admiralty is a court of equity, and a "party who asks its aid must come before it with clean hands "and with such facts as will *ex aequo et bono* show a proper "case for its interposition. If the salvors have been guilty of "misconduct or of negligence or have been in collusion with "the master, or have attempted to take advantage of the un- "fortunate, they have thereby forfeited all claim for com- "pensation, even for services actually rendered. *The* "*Boston*, 1 Sumner, p. 328; *The Byron*, 5 Ad. Record, "248; *The Lady Worsley*, 2 Spinks, 253; *The Bello Corunes*, "6 Wheaton, 152; *Marvin on Wreck and Salvage*, 222; *Jones* "*on Salvage*, 124; *Cohen's Admiralty Law*, 171. The un- "disputed facts of this case show it to be at least most "peculiar, the books containing nothing similar to it, and "in my judgment the courts should not aid in duplicating it by "tolerating such litigation. I think that the decree of the "District Court should be reversed and the cause remanded "with directions that the libel be dismissed and that the "claimant recover all costs" *(Opinion, Appendix to Partition,* "*pp. 30, 31.)*

Every one of the four Judges who have heard the case has expressed his opinion that there was a wrongful concealment of material facts by the libellant, and they have differed only as to the legal effect of such concealment.

The learned District Judge, who entertained comparatively mild views upon the question, apparently did not comprehend the full measure of captain Lomm's duplicity. Captain Lomm had been advised by the publications in the *Savannah News* of May 16th and May 17th of the material facts that Minis & Co., of Savannah, were the accredited agents of the owners, and that they were accepting bids for service to be rendered to the *Clandeboye*, and taking the owners' instructions thereon. The District Judge quotes freely, and almost in entirety, these two articles from the *News (Opinion, Record, pp. 175–177).*

In the article of May 17th were these paragraphs :

" Chief mate A. T. Hay and three men left the ship Thurs-
" day morning in an open boat to search for assistance. They
" arrived at Tybee at 6 o'clock yesterday morning, after having
" been five days and nights on the ocean without having spoken
" a passing steamer.

" They were taken on board the Propellor Tow Boat Co.'s
" *Cynthia* and brought to the city, where they arrived at 8
" o'clock and reported to J. F. Minis & Co., ship brokers.
" Carlisle & Co., of London, the owners of the steamship
" *Clandeboye*, were immediately cabled the circumstances of the
" accident. They instructed Minis & Co. to engage a tugboat
" to go to her assistance. The steamship will have to be
" towed to some port to be discharged before a new shaft
" can be placed in her, as the broken part is toodeep in the
" water at the stern of the vessel to be re paired.

" It was not decided yesterday whether the vessel will be
" towed to this port or to her destination. It is very prob-
" able that a tug boat will be secured here to go to her assist-
" ance " *(Exhibit C, pp. 169, 170).*

This portion of the article conveyed distinct notice that Minis & Co., of Savannah, were acting for the steamer, that they were in communication with the owners of the steamer, and that they were considering whether to have the *Clandeboye* go to destination at Vera Cruz, or to a United States port.

The District Judge apparently did not appreciate the force of these recitals, for his long quotation from the article begins immediately *after* these significant paragraphs, and deals with the unimportant recitals of the mate's voyage to Savannah, told in the glowing style of a local reporter *(Opinion, Record, pp. 175, 176).*

The article of May 17th contained this paragraph :

" J. F. Minis & Co., agents for the steamship, have received
" estimates for sending tugs to her assistancefrom all the tug
" companies along the coast, and have submitted the prices to
" Carlisle & Co., the *Clandeboye's* owners, at London. Up to
" late last night no answer had been received, but it is ex-
" pected that instructions will be here this morning " *(Exhibit B, p. 169).*

Certainly this paragraph was of importance in that it conveyed notice that tenders had been received from several tow-boats, and that there was not, in the opinion of the agents